

TABLE OF CHAPTERS

REISSUE REVISED STATUTES

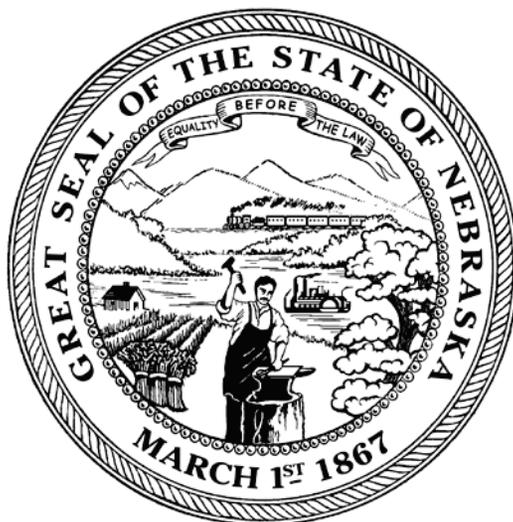
Chapter Number	No. of Articles	Chapter Number	No. of Articles
1. Accountants	1	45. Interest, Loans, and Debt	12
2. Agriculture	57	46. Irrigation and Regulation of Water	17
3. Aeronautics	8	47. Jails and Correctional Facilities	9
4. Aliens	1	48. Labor	35
5. Apportionment	Transferred or Repealed	49. Law	18
6. Assignment for Creditors	Repealed	50. Legislature	15
7. Attorneys at Law	2	51. Libraries and Museums	8
8. Banks and Banking	28	52. Liens	22
9. Bingo and Other Gambling	10	53. Liquors	5
10. Bonds	12	54. Livestock	28
11. Bonds and Oaths, Official	2	55. Militia	7
12. Cemeteries	14	56. Milldams	Repealed
13. Cities, Counties, and Other Political Subdivisions	32	57. Minerals, Oil, and Gas	15
14. Cities of the Metropolitan Class	21	58. Money and Financing	8
15. Cities of the Primary Class	13	59. Monopolies and Unlawful Combinations	18
16. Cities of the First Class	11	60. Motor Vehicles	33
17. Cities of the Second Class and Villages	10	61. Natural Resources	2
18. Cities and Villages; Laws Applicable to All	33	62. Negotiable Instruments	3
19. Cities and Villages; Particular Classes	54	63. Newspapers and Periodicals	1
20. Civil Rights	5	64. Notaries Public	3
21. Corporations and Other Companies	29	65. Oaths and Affirmations	Transferred
22. Counties	4	66. Oils, Fuels, and Energy	21
23. County Government and Officers	39	67. Partnerships	4
24. Courts	13	68. Public Assistance	20
25. Courts; Civil Procedure	34	69. Personal Property	27
26. Courts, Municipal; Civil Procedure	Transferred or Repealed	70. Power Districts and Corporations	21
27. Courts; Rules of Evidence	13	71. Public Health and Welfare	96
28. Crimes and Punishments	16	72. Public Lands, Buildings, and Funds	25
29. Criminal Procedure	46	73. Public Lettings and Contracts	6
30. Decedents' Estates; Protection of Persons and Property	42	74. Railroads	16
31. Drainage	10	75. Public Service Commission	10
32. Elections	17	76. Real Property	35
33. Fees and Salaries	1	77. Revenue and Taxation	63
34. Fences, Boundaries, and Landmarks	3	78. Salvages	Repealed
35. Fire Companies and Firefighters	14	79. Schools	26
36. Fraud	7	80. Servicemembers and Veterans	9
37. Game and Parks	17	81. State Administrative Departments	37
38. Health Occupations and Professions	40	82. State Culture and History	7
39. Highways and Bridges	28	83. State Institutions	12
40. Homesteads	1	84. State Officers	16
41. Hotels and Inns	2	85. State University, State Colleges, and Postsecondary Education	26
42. Households and Families	13	86. Telecommunications and Technology	11
43. Infants and Juveniles	48	87. Trade Practices	8
44. Insurance	92	88. Warehouses	6
		89. Weights and Measures	2
		90. Special Acts	5
		91. Uniform Commercial Code	12

REVISED STATUTES OF NEBRASKA

2018 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 - 22, INCLUSIVE



CITE AS FOLLOWS

R.S.SUPP.,2018

COPYRIGHT, 2018

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, 1A, and 1B.....	2012
Volumes 2 and 2A	2016
Volume 3	2016
Volumes 3A and 3B.....	2010
Volumes 4, 4A, and 4B.....	2018
Volumes 5 and 5A	2014
Volume 6	2001
Cross Reference Tables	2000

Joanne M. Pepperl
Revisor of Statutes
(402) 471-2225
jpepperl@leg.ne.gov

CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2018 Cumulative Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the Ninety-seventh Legislature, First Special Session, 2001, through the One Hundred Fifth Legislature, Second Session, 2018, 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.

Joanne M. Pepperl
Revisor of Statutes

Lincoln, Nebraska
August 1, 2018

EDITORIAL STAFF

Joanne M. Pepperl	Revisor of Statutes
Marcia M. McClurg	Assistant Revisor of Statutes
Neal P. Nelson	Associate Revisor of Statutes
Micah L. Uher	Associate Revisor of Statutes
Mark A. Ludwig	Associate Revisor of Statutes
Tammy Barry	Senior Legal Counsel
Andrew J. Conroy	Legal Counsel
Jane Plettner-Nielson	Statute Technician
Suzanne Tesina	Assistant Statute Technician
Brandi Thorn.....	Assistant Statute Technician
Marilee McPherson.....	Assistant Statute Technician
Megan Rothluebber	Assistant Statute Technician
Gaylena Gibson	Assistant Statute Technician
Catlin Bates	Assistant Statute Technician

ANNOTATIONS

ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 3.

Limitations on ex post facto judicial decisionmaking are inherent in the notion of due process, and retroactive judicial decisionmaking may be analyzed in accordance with the more basic and general principle of fair warning under the Due Process Clause; the question is whether the judicial decision being applied retroactively is both unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue. *Caton v. State*, 291 Neb. 939, 869 N.W.2d 911 (2015).

Article I, sec. 7.

A seizure subject to constitutional protections did not occur where a police officer activated the patrol unit's overhead lights and merely questioned the defendant in a public place; there was no evidence that the officer displayed his weapon, used a forceful tone of voice, touched the defendant, or otherwise told the defendant that he was not free to leave. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

Provision in a warrant authorizing the police to search for "[a]ny and all firearms" was sufficiently particular. *State v. Tyler*, 291 Neb. 920, 870 N.W.2d 119 (2015).

The consent to search a cell phone was given voluntarily where the defendant had been released from the squad car and handcuffs and had participated in the search by helping the officers unlock the cell phone's lock code. *State v. Tyler*, 291 Neb. 920, 870 N.W.2d 119 (2015).

Article I, sec. 9.

In determining whether a criminal fine is so excessive as to violate this provision prohibiting excessive fines, the test is whether the penalty is grossly disproportional to the gravity of the defendant's offense. *State v. Newcomer*, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

In order to determine whether a fine challenged under this provision is grossly disproportional, the claimant must first make a prima facie showing of gross disproportionality, and if the claimant does so, the court then considers whether the disproportionality reaches such a level of excessiveness that the punishment is more criminal than the crime. *State v. Newcomer*, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

Article I, sec. 16.

The Ex Post Facto Clauses are a limitation upon the powers of the Legislature and do not concern judicial decisions. *Caton v. State*, 291 Neb. 939, 869 N.W.2d 911 (2015).

Article III, sec. 18.

A zoning ordinance's exemption for property in a fixed geographic area was not special legislation, because it did not create a closed class nor did it create an arbitrary and unreasonable method of classification. *Dowd Grain Co. v. County of Sarpy*, 291 Neb. 620, 867 N.W.2d 599 (2015).

Generally, a class of property owners in a certain geographic area cannot form a closed class. *Dowd Grain Co. v. County of Sarpy*, 291 Neb. 620, 867 N.W.2d 599 (2015).

STATUTES OF THE STATE OF NEBRASKA

7-101.

A licensed member of the Nebraska bar must represent a limited liability company in the courts of this state. *Steinhausen v. HomeServices of Neb.*, 289 Neb. 927, 857 N.W.2d 816 (2015).

ANNOTATIONS

A responsive letter filed by the registered agent on behalf of the defendant corporation was a nullity and did not constitute an answer, because the registered agent is not a party to the lawsuit and is not authorized to practice law. *Turbines Ltd. v. Transupport, Inc.*, 19 Neb. App. 485, 808 N.W.2d 643 (2012).

A parent who is not an attorney may not provide legal representation on behalf of his or her minor child in a negligence action. *Goodwin v. Hobza*, 17 Neb. App. 353, 762 N.W.2d 623 (2009).

7-104.

A lawyer who was convicted of public indecency had violated his oath of office as an attorney under this section. *State ex rel. Counsel for Dis. v. Cording*, 285 Neb. 146, 825 N.W.2d 792 (2013).

7-107.

A settlement agreement may be established by the testimony of the attorney of the party sought to be bound. *Furstenfeld v. Pepin*, 23 Neb. App. 155, 869 N.W.2d 353 (2015).

8-1118.

A buyer's sophistication is irrelevant to a claim under subsection (1) of this section. *DMK Biodiesel v. McCoy*, 290 Neb. 286, 859 N.W.2d 867 (2015).

Reliance is not an element of an investor's claim against the seller of a security under subsection (1) of this section. *DMK Biodiesel v. McCoy*, 290 Neb. 286, 859 N.W.2d 867 (2015).

Expert testimony is not required to prove that a party offered or sold an unregistered security which was required by law to be registered or sold a security by means of an untrue statement or omission of a material fact. *Hooper v. Freedom Fin. Group*, 280 Neb. 111, 784 N.W.2d 437 (2010).

Officers and directors of a corporation which violated the law are strictly liable for a violation of the Securities Act of Nebraska unless the statutory defense of lack of knowledge is proved. *Hooper v. Freedom Fin. Group*, 280 Neb. 111, 784 N.W.2d 437 (2010).

13-315.

There is no hard-and-fast rule in determining whether a proposed expenditure of public funds is valid as devoted to a public use or purpose, and each case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare. *Kalkowski v. Nebraska Nat. Trails Museum Found.*, 20 Neb. App. 541, 826 N.W.2d 589 (2013).

13-901.

The Political Subdivisions Tort Claims Act provides for interaction between that act and the Nebraska Hospital-Medical Liability Act. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

13-905.

Where the secretary of a county hospital's board of trustees was the person whose duty it was to maintain the official records of the political subdivision, a claim filed with the county clerk and the county hospital's chief executive officer did not comply with the notice requirements of the Political Subdivisions Tort Claims Act. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

A substantial compliance analysis is applied when there is a question about whether the content of the required claim meets the requirements of the statute; however, if the notice is not filed with the person designated by statute as the authorized recipient, a substantial compliance analysis is not applicable. *Lowe v. Lancaster Cty. Sch. Dist.* 0001, 17 Neb. App. 419, 766 N.W.2d 408 (2009).

The filing requirement of this section constitutes a "procedural precedent" to the commencement of a judicial action. *Lowe v. Lancaster Cty. Sch. Dist.* 0001, 17 Neb. App. 419, 766 N.W.2d 408 (2009).

There is no statutory requirement that a claim filed pursuant to the Political Subdivisions Tort Claims Act need be addressed to a particular individual. *Lowe v. Lancaster Cty. Sch. Dist.* 0001, 17 Neb. App. 419, 766 N.W.2d 408 (2009).

ANNOTATIONS

A motorist's letter to the city substantially complied with the notice provisions of the Political Subdivisions Tort Claims Act, such that the motorist could maintain a negligence action against the city to recover damages for injuries he sustained in a motor vehicle accident with a city employee, where the letter stated the date, location, and circumstances of the accident, that the motorist suffered personal injuries as a result of the accident, and that the letter served as notice to the city under the act. *Villanueva v. City of South Sioux City*, 16 Neb. App. 288, 743 N.W.2d 771 (2008).

13-907.

In 1875, there was no right to a jury trial on any issue in a suit against the State or its political subdivisions because the common-law doctrine of sovereign immunity, and the related common-law doctrine of governmental immunity, operated to bar such suits at that time. *Jacobson v. Shresta*, 288 Neb. 615, 849 N.W.2d 515 (2014).

The Legislature has the right to decide the terms under which it will waive its sovereign and governmental immunity for tort actions against the State or its political subdivisions. Because a jury trial is not one of the terms of the State's waiver of governmental immunity under the Political Subdivisions Tort Claims Act, a party is not entitled to a jury trial on its claim that a defendant is not a political subdivision employee. *Jacobson v. Shresta*, 288 Neb. 615, 849 N.W.2d 515 (2014).

13-910.

"[O]ther public place" under subdivision (10) of this section included a sidewalk leading from a community center to a parking lot. *Stick v. City of Omaha*, 289 Neb. 752, 857 N.W.2d 561 (2015).

As used in subdivision (9) of this section, the term "malfunction" does not mean lack of efficacy. *Blaser v. County of Madison*, 288 Neb. 306, 847 N.W.2d 293 (2014).

A county waived its claim that it was entitled to sovereign immunity by failing to identify immunity under the discretionary function exception as an issue for trial in the pretrial order. *Hall v. County of Lancaster*, 287 Neb. 969, 846 N.W.2d 107 (2014).

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning a sight-restricted railroad crossing at which a collision occurred because neither the State nor the county had any mandatory legal duty to improve any sight restrictions at the crossing. *ShIPLEY v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. *ShIPLEY v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred failure-to-warn claim concerning a sight-restricted railroad crossing; neither the State of Nebraska nor Cass County had a nondiscretionary duty to warn where the truck wash facility alleged to be the cause of the sight restriction was built by a private party on private property and was readily apparent to a motorist approaching the crossing. *ShIPLEY v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

In deciding whether conduct falls within the battery exception to the Political Subdivisions Tort Claims Act, it is only necessary to determine whether the conduct arises out of a battery; no determination has to be made as to whether the actor ultimately could be held liable for any damage resulting from the battery, based on the presence or absence of affirmative defenses. *Britton v. City of Crawford*, 282 Neb. 374, 803 N.W.2d 508 (2011).

13-911.

The trial court's finding that prior to a collision, the police officers activated the cruiser's overhead lights and the cruiser was increasing its speed supported the court's conclusion that the officers were making an active attempt to apprehend. *Williams v. City of Omaha*, 291 Neb. 403, 865 N.W.2d 779 (2015).

Under subsection (1) of this section, a political subdivision is strictly liable for injuries to an "innocent third party" during a vehicular pursuit, regardless of whether the law enforcement officer's actions were otherwise proper or even necessary. An "innocent third party" is one who has not promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel and one who is not sought to be apprehended in the fleeing vehicle. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

ANNOTATIONS

Pursuant to subsection (5) of this section, an officer's merely following a vehicle in order to provide information to other officers as to the vehicle's location does not constitute a vehicular pursuit. *Perez v. City of Omaha*, 15 Neb. App. 502, 731 N.W.2d 604 (2007).

A passenger in a fleeing vehicle is not an innocent third party if such passenger either (1) promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel or (2) is one who is sought to be apprehended in the fleeing vehicle. *Jura v. City of Omaha*, 15 Neb. App. 390, 727 N.W.2d 735 (2007).

A police officer's grounds for seeking to apprehend occupants in a vehicular chase situation must have a reasonable basis in the law and facts. *Jura v. City of Omaha*, 15 Neb. App. 390, 727 N.W.2d 735 (2007).

Apprehension can mean to arrest, catch, or detain. *Jura v. City of Omaha*, 15 Neb. App. 390, 727 N.W.2d 735 (2007).

A passenger is not an innocent third party if the passenger either (1) has promoted, provoked, or persuaded the driver to engage in flight from law enforcement personnel or (2) is sought to be apprehended in the fleeing vehicle. *Reed v. City of Omaha*, 15 Neb. App. 234, 724 N.W.2d 834 (2006).

13-919.

An amended tort claim was time barred where the initial tort claim was timely filed but was not filed with the individual statutorily designated to receive tort claims and the amended tort claim was filed with the proper individual but was not filed within 1 year after the claim accrued. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

A cause of action accrues, thereby starting the period of limitations, when a potential plaintiff discovers, or in the exercise of reasonable diligence should discover, the political subdivision's negligence. *Gard v. City of Omaha*, 18 Neb. App. 504, 786 N.W.2d 688 (2010).

Because compliance with statutory time limits such as that set forth in this section can be determined with precision, the doctrine of substantial compliance generally has no application. *Gard v. City of Omaha*, 18 Neb. App. 504, 786 N.W.2d 688 (2010).

For purposes of the Political Subdivisions Tort Claims Act, the relevant question is when the cause of action accrued, not when the last injury occurred. *Gard v. City of Omaha*, 18 Neb. App. 504, 786 N.W.2d 688 (2010).

Subsection (3) of this section of the Political Subdivisions Tort Claims Act, permitting 6-month extensions brought "under any other applicable law of the state" against a political subdivision after it is determined that a claim is not permitted under the act, does not extend the time for filing a claim under the act against a different or additional political subdivision after one political subdivision denies the claim. *Mace-Main v. City of Omaha*, 17 Neb. App. 857, 773 N.W.2d 152 (2009).

The discovery rule is applicable to the statute of limitations provisions applicable to prefiling notice requirements under the Political Subdivisions Tort Claims Act. *Mace-Main v. City of Omaha*, 17 Neb. App. 857, 773 N.W.2d 152 (2009).

13-920.

Employment agreements between a political subdivision hospital and a physician and a surgeon described employer-employee relationships, for the purposes of determining whether the physician and the surgeon were employees of the hospital, and therefore, whether medical malpractice suit by the special administrator of the patient's estate was subject to a 1-year presentment requirement as a condition precedent to suit under the Political Subdivisions Tort Claims Act, where, under agreements, the hospital controlled numerous aspects of job performance, including billing and patient records, salaries and deductions required by law, benefits, and means and methods of the defendants' services; agreements provided that the physician and the surgeon were required to comply with medical staff bylaws, rules, and regulations and the hospital's administrative policies, and that all space, facilities, supplies, and equipment furnished by the hospital had to be used exclusively for discharge of duties "as an employee." *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

The election by the treating physician and the surgeon, who were employees of the political subdivision hospital, for coverage under the Nebraska Hospital-Medical Liability Act did not excuse the special administrator of the patient's estate from compliance with the 1-year presentment requirement as a condition precedent to suit for wrongful death premised on the medical malpractice under the Political Subdivisions Tort Claims Act. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

ANNOTATIONS

The operation of the Nebraska Hospital-Medical Liability Act does not excuse a plaintiff from compliance with the requirement under the Political Subdivisions Tort Claims Act that the claim be presented to the political subdivision prior to filing suit. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

The physician who treated the patient who presented to the emergency room with coughing after eating meat was acting in the course of employment with the political subdivision hospital at the time of the alleged medically negligent treatment, and thus, the claim for wrongful death premised upon medical malpractice was subject to a 1-year presentment requirement as a condition precedent to suit under the Political Subdivisions Tort Claims Act; the employment agreement was between the hospital and the physician, and under the agreement, the physician was required to perform medical services at the hospital's clinics and area hospitals and to be on-call to provide emergency services, and she was providing medical services to the patient at the hospital pursuant to the agreement. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

The political subdivision hospital, the physician, and the surgeon believed they were creating an employer-employee relationship, and not an agency relationship, by executing agreements for the physician and the surgeon to work at the hospital, for the purposes of determining whether the physician and the surgeon were employees of the hospital, and therefore, whether the medical malpractice by the special administrator of the patient's estate was subject to a 1-year presentment requirement as a condition precedent to suit under the Political Subdivisions Tort Claims Act; the surgeon, who was an alien working at the hospital under a work visa, believed he was an employee of the hospital, as required under the terms of the visa, and a former chief executive officer of the hospital testified that the physician and the surgeon were employees of the hospital. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

The treating physician and the surgeon were "employees" of the political subdivision hospital, and thus, the wrongful death suit premised on the alleged medical malpractice of the admitting physician and the surgeon was subject to a 1-year presentment requirement as a condition precedent to suit under the Political Subdivisions Tort Claims Act. Neither the physician nor the surgeon offered services outside the hospital; both of the defendants were under the supervision of the hospital's chief executive officer and the chief of the medical staff; the hospital provided the defendants with all the facilities and supplies to perform their services; it controlled compensation, mandatory withholdings, and benefits; and the provision of medical services was part of the hospital's regular business. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

While not a jurisdictional prerequisite, the filing or presentment of a claim to the appropriate political subdivision is a condition precedent to commencement of a suit under the Political Subdivisions Tort Claims Act. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

13-926.

When the damages suffered by an "innocent third party" are not fully recoverable because of the damages cap in this section, a political subdivision's right to reimbursement must be reduced "to the extent necessary to fully compensate" the party. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

Parents of an injured minor have one damage cap, and the minor has a separate damage cap. *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012).

The damage cap applies to each person having a claim arising from a single occurrence. *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012).

The Legislature had a rational basis for enacting the damage cap in this section, and the cap does not violate an injured party's right to substantive due process. *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012).

13-1614.

A county is not required to establish benefit plans for its employees which will provide medical coverage. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

14-109.

An occupation tax is a tax upon the privilege of doing business in a particular jurisdiction or upon the act of exercising, undertaking, or operating a given occupation, trade, or profession. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

Both occupation taxes and sales taxes can be "gross receipts taxes." *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

ANNOTATIONS

The legal incidence of an occupation tax falls upon the retailer, because it is a tax upon the act or privilege of engaging in business activities. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

There is no statutory limit on the amount of municipal occupation taxes. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

14-366.

This section authorizes cities of the metropolitan class to condemn private property for use as a public street. *City of Omaha v. Tract No. 1*, 18 Neb. App. 247, 778 N.W.2d 122 (2010).

14-411.

A property owner has standing to seek a variance from a zoning ordinance that, if strictly enforced, would adversely affect the owner's property rights or interests. *Field Club v. Zoning Bd. of Appeals of Omaha*, 283 Neb. 847, 814 N.W.2d 102 (2012).

A prospective purchaser has standing to seek a variance from, or a change in, a zoning ordinance if the prospective purchaser has executed a purchase agreement subject to the grant of a variance or rezoning of the property. Similarly, the holder of an option to purchase property has standing to apply for a variance when the holder is bound to purchase the property if the variance is obtained or when the property owner anticipated that the option holder would seek the variance to complete the sale. *Field Club v. Zoning Bd. of Appeals of Omaha*, 283 Neb. 847, 814 N.W.2d 102 (2012).

A zoning board of appeals need not find a taking in order to grant a variance from a zoning regulation. *Rousseau v. Zoning Bd. of Appeals of Omaha*, 17 Neb. App. 469, 764 N.W.2d 130 (2009).

Pursuant to this section, a zoning board of appeals is not precluded from granting a variance to a zoning regulation even though the regulation went in effect before the applicant purchased the property. *Rousseau v. Zoning Bd. of Appeals of Omaha*, 17 Neb. App. 469, 764 N.W.2d 130 (2009).

14-2125.

Based on the plain language of this section, there is no legal requirement to seek competitive bids before entering into a contract for interstate transmission of natural gas. *Bruno v. Metropolitan Utilities Dist.*, 287 Neb. 551, 844 N.W.2d 50 (2014).

15-734.

Liability under the special use doctrine, regarding portions of public sidewalk altered or constructed to benefit a landowner's property, could not be imputed to a tenant in a customer's negligence action where there was no evidence the tenant was responsible under the lease terms for the maintenance of the sidewalk. *Henderson v. Smallcomb*, 22 Neb. App. 90, 847 N.W.2d 738 (2014).

18-2001.

The plain language of this section authorized the city to extend paving on one block of a street and assess the paving costs against abutting property owners where, at one end, the new paving adjoined a paved intersection of two paved streets. *Johnson v. City of Fremont*, 287 Neb. 960, 845 N.W.2d 279 (2014).

18-2148.

A mandamus action is an appropriate remedy for a redevelopment authority that believes that a county assessor has not complied with his or her duty under this section to transmit a redevelopment project valuation. *Community Redev. Auth. v. Gizinski*, 16 Neb. App. 504, 745 N.W.2d 616 (2008).

18-2523.

A municipal ballot measure with separate provisions does not violate the common-law single subject rule if each of its provisions has a natural and necessary connection with each other and together are part of one general subject. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

ANNOTATIONS

A proposed municipal ballot measure is invalid if it would (1) compel voters to vote for or against distinct propositions in a single vote—when they might not do so if presented separately, (2) confuse voters on the issues they are asked to decide, or (3) create doubt as to what action they have authorized after the election. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Although the Nebraska Constitution does not prohibit a municipal ballot measure from asking voters to approve distinct and independent propositions in a single vote, a common-law single subject rule does prohibit this type of municipal ballot measure to preserve the integrity of the municipal electoral process. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Courts liberally construe grants of municipal initiative and referendum powers to permit, rather than restrict, the power and to attain, rather than prevent, its object. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

To determine whether petitioners for a municipal ballot measure are acting under their initiative power or their referendum power, a court should look to the function of their proposed ballot measure—not its label. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

When petitioners for a municipal ballot measure are not seeking to repeal an ordinance, the correct distinction for determining whether their proposed measure falls under the petitioners' initiative power or their referendum power is whether the proposed measure would enact a new ordinance (initiative power) or would amend an existing ordinance (referendum power). *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

18-2527.

A municipal ballot measure with separate provisions does not violate the common-law single subject rule if each of its provisions has a natural and necessary connection with each other and together are part of one general subject. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

A proposed municipal ballot measure is invalid if it would (1) compel voters to vote for or against distinct propositions in a single vote—when they might not do so if presented separately, (2) confuse voters on the issues they are asked to decide, or (3) create doubt as to what action they have authorized after the election. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Although the Nebraska Constitution does not prohibit a municipal ballot measure from asking voters to approve distinct and independent propositions in a single vote, a common-law single subject rule does prohibit this type of municipal ballot measure to preserve the integrity of the municipal electoral process. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Courts liberally construe grants of municipal initiative and referendum powers to permit, rather than restrict, the power and to attain, rather than prevent, its object. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

To determine whether petitioners for a municipal ballot measure are acting under their initiative power or their referendum power, a court should look to the function of their proposed ballot measure—not its label. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

When petitioners for a municipal ballot measure are not seeking to repeal an ordinance, the correct distinction for determining whether their proposed measure falls under the petitioners' initiative power or their referendum power is whether the proposed measure would enact a new ordinance (initiative power) or would amend an existing ordinance (referendum power). *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

18-2528.

Under subsection (1)(a) of this section, a general tax ordinance cannot be a measure necessary to carry out a contractual obligation if the obligation did not exist when the municipality passed it. Subsection (1)(a) does not shield from the referendum process a revenue measure that funds a city's subsequent contractual obligations for a project that was not previously approved by a measure that was subject to referendum. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

ANNOTATIONS

18-2538.

If a municipality claims that a proposed ballot measure violates a statute under Chapter 18, article 25, of the Nebraska Revised Statutes, the claim is a challenge to the procedure or form of the proposal that may be raised in a preelection declaratory judgment action. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Under this section, if a city files a declaratory judgment action to challenge a ballot measure within 40 days of receiving notice of the requisite signatures, a court may invalidate the measure because of a deficiency in form or procedure even if the voters approved it. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

Under this section, when a city fails to file a declaratory judgment action to challenge the validity of a proposed ballot measure before it receives notification of the requisite signatures, a court does not have authority to keep the measure off the ballot, which precludes a court from blocking a count of the votes. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011).

19-646.

This section vests city managers with authority to make employment decisions subject to the civil service provisions of the Civil Service Act. *Busch v. Civil Service Commission*, 21 Neb. App. 789, 844 N.W.2d 324 (2014).

19-904.01.

Where a zoning law provides for the termination of a legal, nonconforming use after it has been "discontinued" for a reasonable period, there is no requirement to show intent to abandon the nonconforming use. *Rodehorst Bros. v. City of Norfolk Bd. of Adjustment*, 287 Neb. 779, 844 N.W.2d 755 (2014).

19-1832.

Employment may not be terminated solely on a ground enumerated in this section if the employee was not notified that termination was sought on the enumerated ground. *Parent v. City of Bellevue Civil Serv. Comm.*, 17 Neb. App. 458, 763 N.W.2d 739 (2009).

19-1833.

Subsection (2) of this section requires that the governing body of a municipality shall establish by ordinance procedures for acting upon written accusations. *Busch v. Civil Service Commission*, 21 Neb. App. 789, 844 N.W.2d 324 (2014).

Subsection (5) of this section provides that in an appeal from the civil service commission, the district court shall proceed to hear and determine such appeal in a summary manner, and the hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension made by the commission was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. *Busch v. Civil Service Commission*, 21 Neb. App. 789, 844 N.W.2d 324 (2014).

Subsection (5) of this section provides that the accused or governing body may appeal from the judgment of the civil service commission to the district court. *Busch v. Civil Service Commission*, 21 Neb. App. 789, 844 N.W.2d 324 (2014).

Under subsection (1) of this section, no person in the civil service shall be discharged except for cause and then only upon a written accusation. *Busch v. Civil Service Commission*, 21 Neb. App. 789, 844 N.W.2d 324 (2014).

Under subsection (3) of this section, after discharge, a civil service employee may, within 10 days after being notified of the discharge, file with the commission a written demand for an investigation, followed by a hearing. *Busch v. Civil Service Commission*, 21 Neb. App. 789, 844 N.W.2d 324 (2014).

19-4626.

Under the plain language of subsection (2) of this section, the requirements of the Municipal Natural Gas System Condemnation Act did not apply to a city's condemnation proceeding against property consisting of gas facilities where the property was located in an area which had been annexed by the city, and the city owned and operated its own gas system. *SourceGas Distrib. v. City of Hastings*, 287 Neb. 595, 844 N.W.2d 256 (2014).

ANNOTATIONS

20-148.

This section, providing persons with a private cause of action for deprivation of constitutional and statutory rights, is a procedural statute designed to allow plaintiffs to bypass administrative procedures in discrimination actions against private employers; it does not operate to waive sovereign immunity. *Potter v. Board of Regents*, 287 Neb. 732, 844 N.W.2d 741 (2014).

20-209.

This section prevents multiple recoveries from a single publication, but it does not force a plaintiff to elect among libel, slander, and invasion of privacy with respect to the claim a plaintiff advances resulting from a single publication by the defendant. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

21-164.

A member of a limited liability company may file a direct action against only the limited liability company itself, its manager, or another member. *Klingelhoef v. Parker, Grossart*, 20 Neb. App. 825, 834 N.W.2d 249 (2013).

21-165.

This section allows for a derivative action if the member of a limited liability company makes a demand upon the manager of the limited liability company to institute the action unless such demand would be futile. *Klingelhoef v. Parker, Grossart*, 20 Neb. App. 825, 834 N.W.2d 249 (2013).

21-167.

A member bringing a derivative action must set forth in the complaint what actions were taken to comply with section 21-165. *Klingelhoef v. Parker, Grossart*, 20 Neb. App. 825, 834 N.W.2d 249 (2013).

21-20,162.

The director of a corporation, who was not a shareholder of record and for whom there was no nominee certificate on file with the corporation, and his wife were not "shareholders" under subdivision (2)(a) of this section and, thus, lacked standing to bring an action for the judicial dissolution of the corporation. *In re Invol. Dissolution of Wiles Bros.*, 285 Neb. 920, 830 N.W.2d 474 (2013).

23-103.

Ratification of a contractual obligation of a county could only occur by the act of a majority of the board of county commissioners. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

Because Nebraska statutes vest the powers of a county in a "county board," which term is defined to encompass both boards of supervisors existing under township organization and boards of commissioners in counties not under township organization, the adoption of township organization does not alter the basic powers of a county. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-104.

The board of county commissioners could not create a contractual obligation of the county through ratification when a majority of the commissioners did not know of the representations being made. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

23-114.04.

The purpose of a building permit is to ensure compliance with zoning regulations, which compliance should be obtained before construction of the building or structure. *Dowd Grain Co. v. County of Sarpy*, 19 Neb. App. 550, 810 N.W.2d 182 (2012).

23-135.

Compliance with this section was not required where the purported contract at issue concerned health insurance. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

ANNOTATIONS

23-208.

The powers and duties of a county board are not altered by the adoption of township organization. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-209.

Because a township is created by a county from the territory of the county, a county is higher than a township in the hierarchy of political subdivisions in Nebraska. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-215.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-222.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-223.

A township does not have the authority to exercise any powers outside those explicitly given to it by statute. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-224.

Liquid livestock waste falls within the category of "offensive or injurious substances" contemplated by subdivision (6) of this section. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

The power of the electors of a township to "prevent the exposure or deposit of offensive or injurious substances within the limits of the town," as granted under subdivision (6) of this section, gives the electors authority to prohibit liquid livestock waste pipelines on township property. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

The power of the electors of a township to "prevent the exposure or deposit of offensive or injurious substances within the limits of the town," as granted under subdivision (6) of this section, gives the electors sufficient authority to enact regulations governing large livestock confinement facilities that prevent livestock waste from reaching township property. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-228.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-249.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-250.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

ANNOTATIONS

23-251.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-252.

Although each township has a township board and township officers, each of which has statutorily prescribed powers and duties, the powers of the township are exercised through direct local self-government. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-270.

The powers and duties of a county board are not altered by the adoption of township organization. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

23-1734.

An order by a sheriff's merit commission is not final until the order is written and delivered to the parties or counsel. *Schaffer v. Cass County*, 290 Neb. 892, 863 N.W.2d 143 (2015).

23-2306.

A county's retirement system shall be composed of all persons who are or were employed by member counties. *Christiansen v. County of Douglas*, 288 Neb. 564, 849 N.W.2d 493 (2014).

23-2517.

A county board has no power or authority to bargain or agree that any appointment or promotion shall be based upon anything other than merit and fitness except as provided in the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

A county cannot implement any provision of the county employees' collective bargaining agreement that would violate a provision of the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

An "appointment" under the County Civil Service Act refers to an appointing authority's designation of a person to fill a vacant classified service position. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Civil service acts promote effective public service by establishing a personnel administration system that provides equal opportunity for public employment and advancement based on merit and fitness principles. By requiring a county to incorporate these principles, the Legislature intended to prohibit the county, as much as practical, from making these decisions based on political control, partisanship, and personal favoritism. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Properly conducted examinations provide the cornerstone of a merit-based civil service system. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

23-2522.

A personnel policy board is an administrative agency performing quasi-judicial functions when it reviews a grievance of, or disciplinary action against, a classified service employee. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

23-2525.

A county board has no power or authority to bargain or agree that any appointment or promotion shall be based upon anything other than merit and fitness except as provided in the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

ANNOTATIONS

A county cannot implement any provision of the county employees' collective bargaining agreement that would violate a provision of the County Civil Service Act. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

A county department head's preference for a junior employee in his own department created an arbitrary and capricious appointing procedure when the county was conducting open competitive examinations and not promotional examinations. Preference for a department head's own employee is an invalid basis for a hiring decision in open competitive examinations. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Statutory requirements for appointments and promotions under a civil service act are mandatory, and appointing authorities must comply with them for an appointment or promotion to be valid. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Subdivision (3) of this section does not prohibit examiners from evaluating subjective traits if those traits are relevant to an applicant's fitness for a position. But when oral examinations are used to test an applicant's subjective traits, the scoring must be guided by measurable standards. That is, the examinations must provide some reasonable means of judicial review. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Subdivision (3) of this section requires a county to conduct open competitive examinations for vacancies in the classified service. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Subdivision (13) of this section does not preclude a county from defining a transfer to include transfers within the same department. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under subdivision (3) of this section, the Legislature intended to limit an appointing authority's selection of an applicant to one of the applicants who scored highest on the final score of the examination process. When oral interviews are part of the examination process for an appointment to the civil service, an applicant's score on an oral interview must be included in the final score. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under subdivision (4) of this section, a county is not conducting promotional examinations when it posts a position as available to all county employees and fails to consider seniority. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under subdivision (4) of this section, the Legislature intended a county to conduct promotional examinations, and appointing authorities must consider records of performance, seniority, and conduct when making promotions. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

Under this section, a county department head cannot "reassign" a current department employee to fill a new position outside of applicable transfer rules or the competitive examination process. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

When a civil service statute requires an appointing authority to consider seniority in making a promotion, that requirement must be respected. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

When a vacancy in the classified service is not filled by a transfer or under a statutory exception, subdivisions (3) and (4) of this section require a county to fill it through one of two types of examinations: open competitive examinations or promotional examinations. *Blakely v. Lancaster County*, 284 Neb. 659, 825 N.W.2d 149 (2012).

23-3501.

Where a county board has appointed a board of trustees for a county hospital as provided in section 23-3502(1), the county hospital is not merely an agency of the county, but, rather, is a separate and independent political subdivision. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

23-3502.

Where a county board has appointed a board of trustees for a county hospital as provided in subsection (1) of this section, the county hospital is not merely an agency of the county, but, rather, is a separate and independent political subdivision. *Brothers v. Kimball Cty. Hosp.*, 289 Neb. 879, 857 N.W.2d 789 (2015).

25-201.02.

Amended pleading to identify intended defendant and to plead that intended defendant had constructive notice of lawsuit would not relate back to original complaint which was served on defendant's father who bore same name,

ANNOTATIONS

for purposes of 4-year limitations period; name of defendant was same in both original and proposed amended complaint, and thus, there was nothing to amend, and summary judgment evidence indicated that intended defendant did not know about lawsuit before limitations period expired. *Rudd v. Debora*, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

25-207.

Amended pleading to identify intended defendant and to plead that intended defendant had constructive notice of lawsuit would not relate back to original complaint which was served on defendant's father who bore same name, for purposes of 4-year limitations period; name of defendant was same in both original and proposed amended complaint, and thus, there was nothing to amend, and summary judgment evidence indicated that intended defendant did not know about lawsuit before limitations period expired. *Rudd v. Debora*, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

The discovery provision in this section relates to when an action must be instituted and does not depend upon the eventual success of a fraud claim. *Kalkowski v. Nebraska Nat. Trails Museum Found.*, 20 Neb. App. 541, 826 N.W.2d 589 (2013).

25-217.

An action is dismissed by operation of law, without any action by either the defendant or the court, as to any defendant who is named in the action and not served with process within 6 months after the complaint is filed. *Rudd v. Debora*, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

In Nebraska, a defendant must be served within 6 months from the date the complaint was filed, regardless of whether the plaintiff falsely believed he had served the correct defendant. *Rudd v. Debora*, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

This section, requiring that complaint be dismissed if not served on defendant within 6 months of filing, was self-executing and mandatory, and did not authorize trial court to extend time for filing service of summons and complaint on intended defendant after 6-month deadline expired based on injured plaintiff's having erroneously served summons and complaint on intended defendant's father, who bore same name as defendant. *Rudd v. Debora*, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

Six months after the date a complaint is filed, the action is dismissed, without prejudice, as to any defendant not served, without predicate action by the trial court. If service is effected after this date, such service does not negate the dismissal. *Old Home Enterprise v. Fleming*, 20 Neb. App. 705, 831 N.W.2d 46 (2013).

25-223.

Where there is no claim that a builder failed to make repairs when requested to do so pursuant to an express warranty and the claim is based on the defective construction itself, the express warranty does not extend the statute of limitations. *Adams v. Manchester Park*, 291 Neb. 978, 871 N.W.2d 215 (2015).

25-301.

Under this section, an amendment joining the real parties in interest relates back to the date of the original pleading. *Fisher v. Heirs & devisees of T.D. Lovercheck*, 291 Neb. 9, 864 N.W.2d 212 (2015).

25-322.

Although an attorney of a deceased client may have a duty to protect the client's interests by alerting a legal representative of his or her pending claim, absent a contractual agreement to the contrary, an attorney's representation of a client generally ends upon the death of that client. A deceased party's representative or successor in interest must either seek a conditional order of revival under Chapter 25, article 14, of the Nebraska Revised Statutes or seek a court's substitution order under this section before an action or proceeding can continue. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

An attorney's unauthorized actions on the part of a deceased client are a nullity. So, unless a deceased client's legal representative or the client's contractual agreement authorizes the attorney to take or continue an action for the client, an attorney cannot take any further valid action in the matter. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

ANNOTATIONS

In this section, the Legislature anticipated that a substitution of a legal representative or successor in interest is required when a party dies before the action can continue. This substitution is required because a deceased person cannot maintain a right of action against another or defend a legal interest in an action or proceeding. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

25-328.

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-329 and 25-330 in order to participate in juvenile proceedings involving the parent's child. In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015).

Alleged father's petition to intervene in child dependency proceeding was timely filed; the petition was filed less than 1 month after adjudication, prior to the first disposition and placement hearing. In re Interest of Sarah H., 21 Neb. App. 441, 838 N.W.2d 389 (2013).

25-329.

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-328 and 25-330 in order to participate in juvenile proceedings involving the parent's child. In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015).

25-330.

A parent in a juvenile action does not need to follow the intervention procedures set forth in this section and sections 25-328 and 25-329 in order to participate in juvenile proceedings involving the parent's child. In re Interest of Sloane O., 291 Neb. 892, 870 N.W.2d 110 (2015).

25-505.01.

Although this section does not require service to be sent to the defendant's residence or restrict delivery to the addressee, due process requires notice to be reasonably calculated to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections. Capital One Bank v. Lehmann, 23 Neb. App. 292, 869 N.W.2d 917 (2015).

25-516.01.

Intended defendant's father, who bore same name as defendant without distinction of "Sr." or "Jr.," had no obligation to assert affirmative defense of lack of jurisdiction or insufficient service either in answer or by motion, in plaintiff's action for personal injuries, as grounds for permitting plaintiff to serve intended defendant rather than dismissing complaint with prejudice; trial court acquired personal jurisdiction over father when father was served, and there was no objection to service of summons on father. Rudd v. Debora, 20 Neb. App. 850, 835 N.W.2d 765 (2013).

25-824.

When a motion for attorney fees under this section is made prior to the judgment of the court in which the attorney's services were rendered, the judgment will not become final and appealable until the court has ruled upon that motion. Murray v. Stine, 291 Neb. 125, 864 N.W.2d 386 (2015).

The term "frivolous," as used in this section, providing for the award of attorney fees for the bringing of a frivolous claim, connotes an improper motive or legal position so wholly without merit as to be ridiculous. Shandera v. Schultz, 23 Neb. App. 521, 876 N.W.2d 667 (2016).

25-1090.

A summary judgment in a receiver's favor finding that he is not liable to an intervenor for a claim is a "direction" to a receiver from which an appeal is allowable; such summary judgment is "final" because it fully and completely determines the dispute between the intervenor and the receiver. Sutton v. Killham, 19 Neb. App. 842, 820 N.W.2d 292 (2012).

ANNOTATIONS

25-1127.

In the absence of a request by a party for specific findings, a trial court is not required to make detailed findings of fact and need only make its findings generally for the prevailing party. *Lesser v. Eagle Hills Homeowners' Assn.*, 20 Neb. App. 423, 824 N.W.2d 77 (2012).

25-1142.

In a trial to establish custody of a child born out of wedlock, a mother's rights were not substantially affected as a result of the father's failure to answer interrogatories. *State on behalf of Keegan M. v. Joshua M.*, 20 Neb. App. 411, 824 N.W.2d 383 (2012).

25-1144.01.

The trial court's unsigned journal entry that was sent to both parties was the court's announcement of its decision, and thus, the defendant's motion for new trial, which was filed after the court sent the unsigned journal entry to the parties but before the court entered the marital dissolution decree, was effective under this section. *Despain v. Despain*, 290 Neb. 32, 858 N.W.2d 566 (2015).

25-1148.

An appellate court will assess motions to continue a trial that do not fully comply with the rule governing requests for continuance in the broader context of the parties' substantial rights. *State on behalf of Keegan M. v. Joshua M.*, 20 Neb. App. 411, 824 N.W.2d 383 (2012).

An application for continuance shall state the grounds upon which the application is made and be supported by affidavits of persons competent to testify as witnesses in proof of and setting forth the facts upon which such continuance is asked. *State v. Vela-Montes*, 19 Neb. App. 378, 807 N.W.2d 544 (2011).

Noncompliance with the clear mandates of this section is merely a factor to be considered in determining whether the trial court abused its discretion in ruling upon a motion for continuance. *State v. Vela-Montes*, 19 Neb. App. 378, 807 N.W.2d 544 (2011).

25-1301.

A docket entry that is neither signed nor file stamped is not a final order. *State v. Meints*, 291 Neb. 869, 869 N.W.2d 343 (2015).

25-1315.

One may bring an appeal pursuant to subsection (1) of this section governing entry of a final judgment as to fewer than all of the claims or parties only when (1) multiple causes of action or multiple parties are present, (2) the court enters a "final order" 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. *Southwest Omaha Hospitality v. Werner-Robertson*, 20 Neb. App. 930, 834 N.W.2d 617 (2013).

Without an express determination that there is no reason for delay and an express direction for the entry of final judgment from the trial court, an appellate court is without jurisdiction to hear an appeal from an order that does not dispose of all of the claims against all of the parties. *Abante, LLC v. Premier Fighter*, 19 Neb. App. 730, 814 N.W.2d 109 (2012).

25-1332.

Summary judgment is proper when the pleadings and the evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Stackhouse v. Gaver*, 19 Neb. App. 117, 801 N.W.2d 260 (2011).

25-1334.

The affidavit of a county's planning director, which attached the zoning regulations at issue, was material and relevant, even if the portion of the affidavit containing the affiant's interpretation of the regulation and its applicability was inadmissible. *Dowd Grain Co. v. County of Sarpy*, 19 Neb. App. 550, 810 N.W.2d 182 (2012).

ANNOTATIONS

25-1635.

Absent a reasonable ground for investigating jury misconduct or corruption, a party cannot use posttrial interviews with jurors as a "fishing expedition" to find some reason to attack a verdict. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

Because there is no constitutional right to obtain information about a jury's deliberations, a court's discretion under this section to disclose juror information for good cause shown after a verdict should be tempered by the restrictions imposed under section 27-606(2). *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

25-1708.

The scope of the exception to this section is limited to a plaintiff's waiver or release of costs in writing. *Credit Mgmt. Servs. v. Jefferson*, 290 Neb. 664, 861 N.W.2d 432 (2015).

This section does not provide for an exception where the defendant voluntarily paid the plaintiff's claim after the action was filed but before a judgment was entered. *Credit Mgmt. Servs. v. Jefferson*, 290 Neb. 664, 861 N.W.2d 432 (2015).

25-1901.

Sheriffs' merit commissions are considered "tribunals" under this section. *Schaffer v. Cass County*, 290 Neb. 892, 863 N.W.2d 143 (2015).

An action brought by a county employee alleging that administrative discipline imposed upon him by his employer was a breach of contract was, at its core, an appeal of the decision of an administrative body denying a grievance and must comply with the petition in error statutes. *Turnbull v. County of Pawnee*, 19 Neb. App. 43, 810 N.W.2d 172 (2011).

25-1902.

An order of the trial court issuing a warrant for a defendant's arrest and commitment upon finding that the Department of Correctional Services had erroneously released the defendant before his mandatory discharge date was an order on summary application relating to a final judgment (the defendant's sentence). But the order did not affect a substantial right necessary to qualify for immediate appeal. The trial court was not deciding any important right or issue affecting the subject matter of the underlying criminal action or of any rights allegedly derived from the mistaken release, and the trial court did not diminish any claim or defense that was available to the defendant prior to the order for an arrest and commitment warrant. *State v. Jackson*, 291 Neb. 908, 870 N.W.2d 133 (2015).

An order dismissing a case "subject to being reinstated" upon the filing of a motion for reinstatement within 14 days is conditional and, thus, not a final order. *State v. Meints*, 291 Neb. 869, 869 N.W.2d 343 (2015).

An order in a juvenile proceeding merely finding the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act applicable, without further adjudicative or dispositive action, is not a final order within the meaning of this section. *In re Interest of Jassenia H.*, 291 Neb. 107, 864 N.W.2d 242 (2015).

A court's temporary injunction or stay that merely preserves the status quo pending a further order is not an order that amounts to a dismissal of the action or that permanently denies relief to a party. So it is not a final, appealable order. *Shasta Linen Supply v. Applied Underwriters*, 290 Neb. 640, 861 N.W.2d 425 (2015).

A motion to compel arbitration invokes a special proceeding. An order that compels arbitration or stays court proceedings pending arbitration divests the court of jurisdiction to hear the parties' dispute and determines arbitrability. Accordingly, it is a final, appealable order. *Shasta Linen Supply v. Applied Underwriters*, 290 Neb. 640, 861 N.W.2d 425 (2015).

When an appeal presents two jurisdictional issues—whether a party has appealed from a final order or judgment and whether the lower court had jurisdiction over the parties' dispute—the first step in determining appellate jurisdiction is to determine whether the lower court's order was final and appealable. *Shasta Linen Supply v. Applied Underwriters*, 290 Neb. 640, 861 N.W.2d 425 (2015); *Big John's Billiards v. State*, 283 Neb. 496, 811 N.W.2d 205 (2012).

Juvenile court orders which changed the permanency objective from reunification to adoption, with concurrent plans that did not include reunification with the mother, were appealable even though they contained many of the

ANNOTATIONS

same goals and strategies as previous orders, because an oral statement by the juvenile court from the bench had the effect of ending any services aimed at reunification with the mother and, thus, affected the mother's substantial rights. In re Interest of Octavio B. et al., 290 Neb. 589, 861 N.W.2d 415 (2015).

The three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. *Kilgore v. Nebraska Dept. of Health & Human Servs.*, 277 Neb. 456, 763 N.W.2d 77 (2009); *State v. Bjorklund*, 258 Neb. 432, 604 N.W.2d 169 (2000); *State v. Silvers*, 255 Neb. 702, 587 N.W.2d 325 (1998); *In re Interest of Anthony G.*, 255 Neb. 442, 586 N.W.2d 427 (1998); *State v. Kula*, 254 Neb. 962, 579 N.W.2d 541 (1998); *Hull v. Aetna Ins. Co.*, 247 Neb. 713, 529 N.W.2d 783 (1995); *Rohde v. Farmers Alliance Mut. Ins. Co.*, 244 Neb. 863, 509 N.W.2d 618 (1994); *Jarrett v. Eichler*, 244 Neb. 310, 506 N.W.2d 682 (1993); *In re Interest of R.G.*, 238 Neb. 405, 470 N.W.2d 780 (1991); *Abante, LLC v. Premier Fighter*, 19 Neb. App. 730, 814 N.W.2d 109 (2012); *Michael B. v. Donna M.*, 11 Neb. App. 346, 652 N.W.2d 618 (2002); *Jacobson v. Jacobson*, 10 Neb. App. 622, 635 N.W.2d 272 (2001); *O'Connor v. Kaufman*, 6 Neb. App. 382, 574 N.W.2d 513 (1998).

A substantial right under this section is an essential legal right. *Furstenfeld v. Pepin*, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

An order on summary application in an action after judgment under this section is an order ruling on a postjudgment motion in an action. *Furstenfeld v. Pepin*, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Substantial rights under this section include those legal rights that a party is entitled to enforce or defend. *Furstenfeld v. Pepin*, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Under this section, the three types of final orders that an appellate court may review are (1) an order that affects a substantial right and that determines the action and prevents a judgment, (2) an order that affects a substantial right made during a special proceeding, and (3) an order that affects a substantial right made on summary application in an action after a judgment is rendered. *Furstenfeld v. Pepin*, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Under this section, the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. *Belitz v. Belitz*, 21 Neb. App. 716, 842 N.W.2d 613 (2014).

The granting of a summary judgment is a final order where it concludes all issues between the two parties on either side of the motion. *Abante, LLC v. Premier Fighter*, 19 Neb. App. 730, 814 N.W.2d 109 (2012).

25-1905.

Petition in error statute that mandates that appellant file with his or her petition for review a transcript of the proceedings or a praecipe directing the tribunal, board, or officer to prepare the transcript of the proceedings plainly indicates that the transcript or praecipe must be filed specifically with the petition in error and must contain the final judgment or order sought to be reversed, vacated, or modified. *Meints v. City of Beatrice*, 20 Neb. App. 129, 820 N.W.2d 90 (2012).

25-1912.

Under subsection (1) of this section, a notice of appeal must be filed within 30 days of the entry of the final order in order to vest an appellate court with jurisdiction. *In re Interest of Shane L. et al.*, 21 Neb. App. 591, 842 N.W.2d 140 (2013).

25-2001.

Trial court had no obligation, under statute permitting correction of clerical mistakes in judgments, to set supersedeas bond pending borrower's appeal from order entered in forcible entry and detainer action, so as to prevent issuance of writ of restitution pending borrower's appeal from judgment entered in forcible entry and detainer action brought by lender who purchased property at trustees' sale after borrower defaulted on deed of trust; rather, it was borrower who should have posted supersedeas bond to prevent writ of restitution from being issued pending appeal. *Enterprise Bank v. Knight*, 20 Neb. App. 662, 832 N.W.2d 25 (2013).

ANNOTATIONS

Pursuant to subsection (3) of this section, an order nunc pro tunc is appropriate only to remedy an error arising from oversight or omission, but not to allow a court to sua sponte clarify prior order in absence of any clerical or scrivener's error. *Willis v. Brammer*, 20 Neb. App. 574, 826 N.W.2d 908 (2013).

25-21,185.08.

A request for inconvenience damages is subsumed within a plaintiff's request for mental pain and suffering damages, when the facts show that the plaintiff is actually seeking hedonic damages for the plaintiff's loss of enjoyment of life resulting from physical injuries. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

Apart from an exception for anxiety damages associated with parasitic damages, a request for anxiety damages is usually subsumed with a plaintiff's request for mental pain and suffering damages. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

25-21,185.09.

A wrongful death action brought in the name of a 6-year-old child's mother, as representative of the child's estate, was brought for the exclusive benefit of the child's next of kin, and thus, the child's father, as next of kin and beneficiary of the child's estate, was properly included in the court's instruction to the jury regarding the allocation of percentages of contributory negligence, even though the father was not brought into the action either as a claimant within the meaning of the statute that governed the defense of contributory negligence or as a third-party defendant. *Curtis v. States Family Practice*, 20 Neb. App. 234, 823 N.W.2d 224 (2012).

25-21,234.

Trial court had no obligation, under statute permitting correction of clerical mistakes in judgments, to set supersedeas bond pending borrower's appeal from order entered in forcible entry and detainer action, so as to prevent issuance of writ of restitution pending borrower's appeal from judgment entered in forcible entry and detainer action brought by lender who purchased property at trustees' sale after borrower defaulted on deed of trust; rather, it was borrower who should have posted supersedeas bond to prevent writ of restitution from being issued pending appeal. *Enterprise Bank v. Knight*, 20 Neb. App. 662, 832 N.W.2d 25 (2013).

25-2214.

Although the appellate court's mandate did not state that buyout payments were to be made to the clerk of the district court, the district court had authority to make such an order, because the proper place to pay a judgment is the clerk of the court in which the judgment is obtained. *Robertson v. Jacobs Cattle Co.*, 292 Neb. 195, 874 N.W.2d 1 (2015).

25-2301.

The "fees" specified in subsection (2) of this section do not include a party's attorney fees. *State v. Ortega*, 290 Neb. 172, 859 N.W.2d 305 (2015).

25-2301.01.

By obtaining permission to proceed in forma pauperis, a party is not granted the payment of his or her attorney fees. *State v. Ortega*, 290 Neb. 172, 859 N.W.2d 305 (2015).

25-2301.02.

Under subsection (1) of this section, a trial court cannot deny in forma pauperis status based on the frivolous or malicious nature of the appeal where a defendant has a constitutional right to appeal in a felony case, and a hearing is required on an objection to a party's application for in forma pauperis status, whether the objection is based on the applicant's ability to pay or the applicant is asserting a frivolous position, except where the objection is made on the court's own motion on the grounds that the legal positions asserted by the applicant are frivolous or malicious. *State on behalf of Jakai C. v. Tiffany M.*, 292 Neb. 68, 871 N.W.2d 230 (2015).

An appellate court obtains jurisdiction over an appeal challenging the denial of an application to proceed in forma pauperis upon the filing of a proper application to proceed in forma pauperis and a poverty affidavit with the party's timely notice of appeal. *State v. Carter*, 292 Neb. 16, 870 N.W.2d 641 (2015).

ANNOTATIONS

The trial court properly denied leave to proceed in forma pauperis on the basis that the party asserted only frivolous legal positions in the party's underlying motion for postconviction relief. *State v. Carter*, 292 Neb. 16, 870 N.W.2d 641 (2015).

The filing of an action in an improper venue does not make the legal position asserted by a plaintiff "frivolous or malicious" for purposes of in forma pauperis status. *Castonguay v. Retelsdorf*, 291 Neb. 220, 865 N.W.2d 91 (2015).

A district court's denial of in forma pauperis under this section is reviewed de novo on the record based on the transcript of the hearing or the written statement of the court. *In re Change of Name of Pattangall*, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

A frivolous legal position pursuant to this section is one wholly without merit, that is, without rational argument based on the law or on the evidence. *In re Change of Name of Pattangall*, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to appeal in a felony case, this section allows the court on its own motion to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious, provided that the court issue a written statement of its reasons, findings, and conclusions for denial. *In re Change of Name of Pattangall*, 23 Neb. App. 131, 868 N.W.2d 816 (2015).

A district court's denial of in forma pauperis status is reviewed de novo on the record based on the transcript of the hearing or the written statement of the court. *Gray v. Kenney*, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

A frivolous legal position is one wholly without merit, that is, without rational argument based on the law or on the evidence. *Gray v. Kenney*, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

Except in those cases where the denial of in forma pauperis status would deny a defendant his or her constitutional right to appeal in a felony case, this section allows the court on its own motion, or upon objection by an interested party, to deny in forma pauperis status on the basis that the legal positions asserted by the applicant are frivolous or malicious. *Gray v. Kenney*, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

For the purposes of the statute governing applications to proceed in forma pauperis, a "frivolous legal position" is one wholly without merit, that is, without rational argument based on the law or on the evidence. *Lenz v. Hicks*, 20 Neb. App. 431, 824 N.W.2d 769 (2012).

The former clients' action against the attorney was not frivolous, and thus, the denial of their petition to proceed in forma pauperis for the failure to plead a cause of action was not warranted; liberally construed, the former clients' action alleged that the attorney committed legal malpractice in his representation of them in a bankruptcy case. *Lenz v. Hicks*, 20 Neb. App. 431, 824 N.W.2d 769 (2012).

25-2733.

District courts and higher appellate courts generally review appeals from county courts for error appearing on the record. *Lesser v. Eagle Hills Homeowners' Assn.*, 20 Neb. App. 423, 824 N.W.2d 77 (2012).

25-2806.

The formal rules of evidence do not apply in small claims court. *Flodman v. Robinson*, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

27-301.

The concept referred to as a "presumption of undue influence" in will contests is not a true presumption. *In re Estate of Clinger*, 292 Neb. 237, 872 N.W.2d 37 (2015).

The trial court did not err in refusing a proposed instruction on a presumption of undue influence where both the contestant and the proponent had met their respective burdens of production of evidence. *In re Estate of Clinger*, 292 Neb. 237, 872 N.W.2d 37 (2015).

27-401.

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical

ANNOTATIONS

evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

27-402.

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

Under this section, all relevant evidence is admissible unless there is some specific constitutional or statutory reason to exclude such evidence. *Furstenfeld v. Pepin*, 23 Neb. App. 155, 869 N.W.2d 353 (2015).

27-403.

In a will contest, the trial court did not abuse its discretion in receiving into evidence a video showing the execution of an earlier will; the video was neither unfairly prejudicial nor cumulative. In *re Estate of Clinger*, 292 Neb. 237, 872 N.W.2d 37 (2015).

A court should exclude an expert's opinion when it gives rise to conflicting inferences of equal probability, so the choice between them is a matter of conjecture. An expert opinion which is equivocal and is based upon such words as "could," "may," or "possibly" lacks the certainty required to sustain the burden of proof of causation for which the opinion has been offered. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

An expert does not have to couch his or her opinion in the magic words of "reasonable certainty," but it must be sufficiently definite and relevant to provide a basis for the fact finder's determination of a material fact. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

The relevance of DNA evidence depends on whether it tends to include or exclude an individual as the source of a biological sample. Nebraska case law generally requires that DNA testing results be accompanied by statistical evidence or a probability assessment that explains whether the results tend to include or exclude the individual as a potential source. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

Unless the State presents the statistical significance of DNA testing results that shows a defendant cannot be excluded as a potential source in a biological sample, the results are irrelevant. They are irrelevant because they do not help the fact finder assess whether the defendant is or is not the source of the sample. And because of the significance that jurors will likely attach to DNA evidence, the value of inconclusive testing results is substantially outweighed by the danger that the evidence will mislead the jurors. *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015).

27-404.

In prosecution for intentional child abuse resulting in death, evidence of the child's prior injuries while in the defendant's care was admissible, because those injuries were inextricably intertwined with the fatal injuries. *State v. Cullen*, 292 Neb. 30, 870 N.W.2d 784 (2015).

Subsection (2) of this section does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime. *State v. Kelly*, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

ANNOTATIONS

Although it is proper to admit evidence of other wrongs which constitutes intrinsic evidence intertwined with the charged offense, where the challenged evidence does not include any showing linking the defendant to the other wrongs evidence, it is not intrinsic evidence intertwined with the charged offense. *State v. Thomas*, 19 Neb. App. 36, 798 N.W.2d 620 (2011).

27-414.

A hearing on prior bad acts evidence is not required if the evidence forms the factual setting of the charged offenses and is necessary to present a complete and coherent picture of the facts. *State v. Kelly*, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

This section does not change the law regarding acts which are inextricably intertwined to the charged offenses, so that acts that were not considered extrinsic and therefore not subject to section 27-404 before are not extrinsic and not subject to this section now. *State v. Kelly*, 20 Neb. App. 871, 835 N.W.2d 79 (2013).

Trial court did not abuse its discretion in admitting evidence of a prior sexual assault where the defendant admitted to committing the earlier offense, both offenses involved young boys, and both occurred at a time when the defendant was acting as a babysitter for the boys. *State v. Craigie*, 19 Neb. App. 790, 813 N.W.2d 521 (2012).

27-504.

This section provides a privilege for professional counsel-patient communications, but under subsection (4)(d), no privilege exists in criminal prosecutions for injuries to children. *State v. McMillion*, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

27-606.

A trial court's duty to hold an evidentiary hearing on a substantiated allegation of jury misconduct does not extend into matters which are barred from inquiry under subsection (2) of this section. *State v. Stricklin*, 290 Neb. 542, 861 N.W.2d 367 (2015).

The jury's consideration of a defendant's failure to testify is barred from inquiry under subsection (2) of this section. *State v. Stricklin*, 290 Neb. 542, 861 N.W.2d 367 (2015).

Because there is no constitutional right to obtain information about a jury's deliberations, a court's discretion under section 25-1635 to disclose juror information for good cause shown after a verdict should be tempered by the restrictions imposed under subsection (2) of this section. *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015).

27-608.

Subsection (2) of this section permits questioning during cross-examination only on specific instances of conduct not resulting in a criminal conviction. *State v. Stricklin*, 290 Neb. 542, 861 N.W.2d 367 (2015).

To be admissible, reputation evidence of a witness's untruthfulness must embody the collective judgment of the community and must be derived from a group whose size constitutes an indicium of inherent reliability. The community in which the party has the reputation for untruthfulness must be sufficiently large; if the group is too insular, its opinion of the witness's reputation for untruthfulness may not be reliable because it may have been formed with the same set of biases. *State v. Brooks*, 23 Neb. App. 560, 873 N.W.2d 460 (2016).

27-612.

This section requires production of not only documents used to refresh recollection in the courtroom while the witness is testifying, but also those writings the witness reviewed prior to giving testimony. *State v. McMillion*, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

27-614.

Trial court erred in failing to allow party to cross-examine witness following interrogation by judge where counsel's request to examine or cross-examine any witnesses was denied. *Hronek v. Brosnan*, 20 Neb. App. 200, 823 N.W.2d 204 (2012).

ANNOTATIONS

27-701.

A police officer's testimony regarding the meanings of drug-related code words and jargon used by people involved in the distribution of crack cocaine could not be excluded in a prosecution for drug conspiracy on the basis it invaded the province of the jury. The officer's testimony was helpful, because the meanings of narcotics code words and phrases were not within the common understanding of most jurors, cyphering of the meaning and intent of cell phone calls involving the defendant was something the jury could not do without the interpretation of slang or code words used during the wiretapped calls, and there was proper foundation for the officer's testimony. *State v. Russell*, 292 Neb. 501, 874 N.W.2d 9 (2016).

27-702.

A trial court can consider several nonexclusive factors in determining the reliability of an expert's opinion: (1) whether a theory or technique can be (and has been) tested; (2) whether it has been subjected to peer review and publication; (3) whether, in respect to a particular technique, there is a high known or potential rate of error; (4) whether there are standards controlling the technique's operation; and (5) whether the theory or technique enjoys general acceptance within a relevant scientific community. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

Absent evidence that an expert's testimony grows out of the expert's own prelitigation research or that an expert's research has been subjected to peer review, experts must show that they reached their opinions by following an accepted method or procedure as it is practiced by others in their field. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

Before admitting expert opinion testimony under this section, a trial court must determine whether the expert's knowledge, skill, experience, training, and education qualify the witness as an expert. If an expert's opinion involves scientific or specialized knowledge, a trial court must determine whether the reasoning or methodology underlying the testimony is valid (reliable). It must also determine whether that reasoning or methodology can be properly applied to the facts in issue. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

In a bench trial, a trial court is not required to conclusively determine whether an expert's opinion is reliable before admitting the expert's testimony, because the court is not shielding the jury from unreliable evidence. The court has discretion to admit a qualified expert's opinion subject to its later determination after hearing further evidence that the opinion is unreliable and should not be credited. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

To be admissible, an expert's opinion must be based on good grounds, not mere subjective belief or unsupported speculation. A trial court should not require absolute certainty in an expert's opinion, but it has discretion to exclude expert testimony if an analytical gap between the data and the proffered opinion is too great. *State v. Braesch*, 292 Neb. 930, 874 N.W.2d 874 (2016).

An individual's summary judgment affidavit was not sufficient to meet the requirements to qualify him as an expert in regard to whether a roofing contractor's repairs were defective; the affidavit failed to set forth sufficient foundation for his opinion, because he included no references to his occupation, training, experience, qualifications, or education, and he failed to accurately describe the property he inspected and the methodology he employed during such inspection. *Edwards v. Mount Moriah Missionary Baptist Church*, 21 Neb. App. 896, 845 N.W.2d 595 (2014).

It is within the trial court's discretion to determine whether there is sufficient foundation for an expert witness to give his opinion about an issue in question. *Edwards v. Mount Moriah Missionary Baptist Church*, 21 Neb. App. 896, 845 N.W.2d 595 (2014).

27-706.

If proposed expert testimony is fundamentally flawed by the expert's own admission, it is not an abuse of discretion for the trial court to refuse to appoint the expert under this section when there is no showing that this shortcoming in the expert's proposed testimony has been remedied. *State v. Quezada*, 20 Neb. App. 836, 834 N.W.2d 258 (2013).

27-801.

Pursuant to subsection (4) of this section, the definitional exclusion to the hearsay rule applies to the coverup or concealment of the conspiracy that occurs while the conspiracy is ongoing, just as it would to any other part of the conspiracy. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

ANNOTATIONS

Pursuant to subsection (4) of this section, to withdraw from a conspiracy such that statements of a coconspirator are inadmissible, the coconspirator must do more than ceasing, however definitively, to participate; rather, the coconspirator must make an affirmative action either by making a clean breast to the authorities or by communicating abandonment in a manner calculated to reach coconspirators, and must not resume participation in the conspiracy. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

The fact that witnesses' memories conflict as to when, where, or how out-of-court statements were made may be relevant to the credibility of the witnesses' testimony, but it is not relevant for purposes of analyzing whether an out-of-court statement is a prior consistent statement. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

Pursuant to subsection (1) of this section, a defendant's mother's utterance to a police officer, asking whether the officer was alone, was not a "statement" under the Nebraska Evidence Rules, was not offered for any truth of any matter, and was therefore not hearsay, in a prosecution for third degree assault on a law enforcement officer and second-offense resisting arrest; the utterance was not an assertion or declaration, but instead was an interrogatory seeking information and not asserting any particular fact. *State v. Heath*, 21 Neb. App. 141, 838 N.W.2d 4 (2013).

27-803.

Nebraska's business record exception to hearsay is not a carbon copy of its federal counterpart. Unlike Fed. R. Evid. 803(6), subsection (5) of this section excludes opinions and diagnoses from the business record exception. So, an expert's opinions and medical diagnoses, as distinguished from factual statements, in an employer's file for an employee were not admissible under Nebraska's business record exception. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

The business record exception to hearsay is not limited to records created by the holder of the records. It applies to a memorandum, report, record, or data compilation. The term "data compilation" is broad enough to include records furnished by third parties with knowledge of the relevant acts, events, or conditions if the third party has a duty to make the records and the holder of the record routinely compiles and keeps them. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

27-804.

When considering whether a good faith effort to procure a witness has been made under subdivision (1)(e) of this section, the proper inquiry is whether the means utilized by the proponent prior to trial were reasonable, not whether other means remain available at the time of trial or whether additional steps might have been undertaken. *State v. Trice*, 292 Neb. 482, 874 N.W.2d 286 (2016).

27-901.

The proponent of the text messages is not required to conclusively prove who authored the messages; the possibility of an alteration or misuse by another generally goes to weight, not admissibility. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

27-1002.

The best evidence rule, also known as the original document rule, states that the original writing, recording, or photograph is required to prove the content of that writing, recording, or photograph. *Flodman v. Robinson*, 22 Neb. App. 943, 864 N.W.2d 716 (2015).

28-105.

A person convicted of a felony for which a mandatory minimum sentence is prescribed is not eligible for probation. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in section 28-319.01(2) and "minimum" as used in this section in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

Under subsection (2) of this section, sentences of less than 1 year shall be served in the county jail, whereas sentences of 1 year or more for Class IIIA felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. *State v. Minnick*, 22 Neb. App. 907, 865 N.W.2d 117 (2015).

ANNOTATIONS

28-201.

An intentional killing can be manslaughter, if it results from a sudden quarrel. Thus, attempted sudden quarrel manslaughter can be considered a crime. *State v. Smith*, 19 Neb. App. 708, 811 N.W.2d 720 (2012).

28-305.

Because this section is a codification of the common-law crime of involuntary manslaughter, the State must show all elements of that common-law crime to convict under that section, unless the Legislature expressly dispensed with any such element. Because the Legislature did not specifically exclude mens rea from the language of the offense, the State must show mens rea to sustain a conviction. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

The State has prosecutorial discretion to charge a person for either manslaughter or motor vehicle homicide as the result of an unintentional death arising from an unlawful act during the operation of a motor vehicle where the defendant's conduct constitutes both offenses; but if the State chooses to pursue charges for manslaughter, it must show mens rea. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

To convict a defendant of "unlawful act" manslaughter or "involuntary" manslaughter, the State must show that the defendant acted with more than ordinary negligence in committing the predicate unlawful act. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

Traffic infractions are public welfare offenses which do not require a showing of mens rea and, therefore, are insufficient by themselves to support a conviction for "unlawful act" manslaughter or "involuntary" manslaughter. *State v. Carman*, 292 Neb. 207, 872 N.W.2d 559 (2015).

An intentional killing can be manslaughter, if it results from a sudden quarrel. Thus, attempted sudden quarrel manslaughter can be considered a crime. *State v. Smith*, 19 Neb. App. 708, 811 N.W.2d 720 (2012).

28-308.

There is no double jeopardy violation where a defendant is charged and convicted of first degree assault under this section and second degree assault under section 28-309(1)(a). *State v. Ballew*, 291 Neb. 577, 867 N.W.2d 571 (2015).

28-309.

There is no double jeopardy violation where a defendant is charged and convicted of first degree assault under section 28-308 and second degree assault under subdivision (1)(a) of this section. *State v. Ballew*, 291 Neb. 577, 867 N.W.2d 571 (2015).

28-311.02.

Nebraska's stalking and harassment statutes are given an objective construction, and the victim's experience resulting from the perpetrator's conduct should be assessed on an objective basis. *Glantz v. Daniel*, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

28-311.09.

The 5-day time requirement specified in this section for requesting a hearing is not essential to accomplishing the main objective of Nebraska's stalking and harassment statutes. *Glantz v. Daniel*, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

The requirement in this section to request a hearing within 5 days of service of the ex parte order is directory rather than mandatory. *Glantz v. Daniel*, 21 Neb. App. 89, 837 N.W.2d 563 (2013).

28-319.01.

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in subsection (2) of this section and "minimum" as used in section 28-105 in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

ANNOTATIONS

The mandatory minimum sentence required by subsection (2) of this section affects both probation and parole: Probation is not authorized, and the offender will not receive any good time credit until the full amount of the mandatory minimum term of imprisonment has been served. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

The range of penalties for sexual assault of a child in the first degree, first offense, under subsection (2) of this section, is 15 years' to life imprisonment. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

28-320.01.

The exact date of the commission of an offense is not a substantive element of first, second, or third degree sexual assault of a child. *State v. Samayoa*, 292 Neb. 334, 873 N.W.2d 449 (2015).

28-323.

Multiple counts of third degree domestic assault under this section are not the "same offense" for double jeopardy purposes if a break occurred between the alleged assaults that allowed the defendant to form anew the required criminal intent. *State v. Kleckner*, 291 Neb. 539, 867 N.W.2d 273 (2015).

28-324.

Evidence of a principal's intent to steal drugs from an undercover officer who had just purchased them from him was sufficient to support the defendant's conviction for aiding and abetting robbery; the principal told the officer to give him the drugs back, the officer refused at first and tried to leave, the principal took the money out of his pocket and insisted that the officer take his money back and give the drugs to the principal, the officer ultimately gave the drugs to the principal and took his money back, the officer felt threatened during the incident and felt that he had no choice but to give the drugs to the principal, and the principal had no right to the drugs after the transaction was complete. *State v. Burbach*, 20 Neb. App. 157, 821 N.W.2d 215 (2012).

For purposes of the robbery statute, "stealing" has commonly been described as taking without right or leave with intent to keep wrongfully; the focus of the statute is on the intent to deprive the owner of his or her property permanently, to keep it from him or her. *State v. Burbach*, 20 Neb. App. 157, 821 N.W.2d 215 (2012).

28-636.

"Person" in the context of the term "[p]ersonal identification document" for purposes of this section means a real person and not a fictitious person. *State v. Covey*, 290 Neb. 257, 859 N.W.2d 558 (2015).

28-638.

"Person" in the context of the term "personal identifying information" for purposes of this section means a real person and not a fictitious person. *State v. Covey*, 290 Neb. 257, 859 N.W.2d 558 (2015).

28-706.

To prove that a defendant has failed, refused, or neglected to provide proper support under this section, the State is not required to prove that a defendant has an ability to pay; however, a defendant may present evidence of inability to pay in order to disprove intent. *State v. Erpelding*, 292 Neb. 351, 874 N.W.2d 265 (2015).

28-707.

Under subsection (2) of this section, the statutory privilege between patient and professional counselor is not available in a prosecution for child abuse. *State v. McMillion*, 23 Neb. App. 687, 875 N.W.2d 877 (2016).

28-813.01.

A person knowingly possesses child pornography in violation of this section when he or she knows of the nature or character of the material and of its presence and has dominion or control over it. *State v. Mucia*, 292 Neb. 1, 871 N.W.2d 221 (2015).

ANNOTATIONS

28-905.

This section does not require that the jury have a separate instruction for an attempt to arrest or issue a citation. This element is inherent in the criminal offense as provided in this section. *State v. Armagost*, 291 Neb. 117, 864 N.W.2d 417 (2015).

An attempt to arrest or cite the defendant is an essential element of the offense of fleeing in a motor vehicle to avoid arrest. *State v. Armagost*, 22 Neb. App. 513, 856 N.W.2d 156 (2014).

28-907.

The defendant's allegedly false statements to the 911 emergency dispatch service concerning crimes being committed at a certain address were made to a peace officer for purposes of the criminal statute prohibiting false reporting of a criminal matter; although the 911 emergency dispatch service was not a branch of law enforcement, it acted as an intermediary used by the general public to reach peace officers, and statements made to the emergency dispatch service were made with the intent to summon a law enforcement officer to that address. *State v. Halligan*, 20 Neb. App. 87, 818 N.W.2d 650 (2012).

28-930.

Pepper spray is a dangerous instrument, as it is an object which, because of its nature and the manner and intention of its use, is capable of inflicting bodily injury. *State v. Simmons*, 23 Neb. App. 462, 872 N.W.2d 293 (2015).

28-1205.

Under subsection (3) of this section, only those crimes defined in this section are treated as distinct offenses from the felony committed, and only the sentences imposed under this section are required to be consecutive to any other sentence imposed. *State v. Elliott*, 21 Neb. App. 962, 845 N.W.2d 612 (2014).

28-1206.

Statute prohibiting felon from possessing a firearm includes purchase and possession of antique firearm. *State v. Tharp*, 22 Neb. App. 454, 854 N.W.2d 651 (2014).

28-1407.

The justification or choice of evils defense statute specifies that conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable if the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged and mandates that a legislative purpose to exclude the justification claimed not otherwise plainly appear. *State v. Beal*, 21 Neb. App. 939, 846 N.W.2d 282 (2014).

28-1409.

The policy underlying this section supports its application in situations where a suspect has resisted a pat-down search, even where that pat-down search is later found to be unconstitutional. *State v. Wells*, 290 Neb. 186, 859 N.W.2d 316 (2015).

When one is attacked within one's dwelling, the right to defend oneself and the privilege of nonretreat should apply equally, regardless of whether the attacker is a cohabitant or an unlawful entrant. *State v. White*, 20 Neb. App. 116, 819 N.W.2d 473 (2012).

28-1463.02.

A defendant can be found guilty of creating or possessing child pornography beyond a reasonable doubt even when the actual depiction at issue is unavailable at trial. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

In order to show "erotic nudity," as defined in subsection (3) of this section, the State must prove, first, that the depiction displays a human's genitals or a human's pubic area or female breast area, and second, that the depiction was created for the purpose of real or simulated overt sexual gratification or sexual stimulation. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

ANNOTATIONS

To determine whether photographs were taken for the purpose of real or simulated overt sexual gratification or sexual stimulation, an appellate court considers the following nonexclusive factors: (1) whether the focal point of the visual depiction is on the child's genitalia or pubic area; (2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with sexual activity; (3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child; (4) whether the child is fully or partially clothed, or nude; (5) whether the visual depiction suggests sexual coyness or willingness to engage in sexual activity; and (6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer. *State v. Smith*, 292 Neb. 434, 873 N.W.2d 169 (2016).

29-215.

Subsection (2)(d) of this section authorizes law enforcement to make an arrest outside his or her primary jurisdiction pursuant to an interlocal agreement, but there must be evidence that such an agreement exists and that it actually authorizes authority for the arrest. *State v. Ohlrich*, 20 Neb. App. 67, 817 N.W.2d 797 (2012).

29-411.

Given the facts viewed most favorably to the plaintiff, the defendant officer's statement identifying himself as a sheriff's deputy was insufficient to announce his office and purpose: The officer was dressed in jeans, a sweatshirt, and a ball cap, did not show his badge, displayed a weapon upon entry into the home, and failed to produce a copy of the warrant before or after his forced entry into the home. *Waldron v. Roark*, 292 Neb. 889, 874 N.W.2d 850 (2016).

29-824.

This section provides the State with the specific right of appealing a district court's ruling granting a motion to suppress. *State v. Hood*, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-825.

This section outlines the process for filing with the appellate court an application of review of an order granting a motion to suppress. *State v. Hood*, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

This section specifically requires the appealing party, not the court reporter, to timely file the relevant documents with the clerk of the appellate court. *State v. Hood*, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-826.

This section gives the district court the authority to establish time limits for the State to file a notice of intent with the clerk of the district court seeking review of an order granting a motion to suppress and to file the application with the appellate court. *State v. Hood*, 23 Neb. App. 208, 869 N.W.2d 383 (2015).

29-901.

An appearance bond (less any applicable statutory fee) must be refunded to the defendant rather than peremptorily applied to costs where the defendant appeared as ordered and judgment had been entered against him. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

29-1207.

Unlike the requirement in subsection (4)(f) of this section that any delay be for good cause, conspicuously absent from subsection (4)(a) of this section is any limitation, restriction, or qualification of the time which may be charged to the defendant as a result of the defendant's motions. Rather, the plain terms of subsection (4)(a) exclude all time between the time of the filing of the defendant's pretrial motions and their final disposition, regardless of the promptness or reasonableness of the delay. *State v. Johnson*, 22 Neb. App. 747, 860 N.W.2d 222 (2015).

A defendant's motion to discharge based on statutory speedy trial grounds constitutes a waiver of that right under subsection (4)(b) of this section where (1) the filing of such motion results in the continuance of a timely trial to a date outside the statutory 6-month period, as calculated on the date the motion to discharge was filed, (2) discharge is denied, and (3) that denial is affirmed on appeal. *State v. Fioramonti*, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

ANNOTATIONS

Subsection (1) of this section requires that every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. *State v. Fioramonti*, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

The phrase "period of delay," as used in subsection (4) of this section, is synonymous with the phrase "period of time." *State v. Fioramonti*, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

To calculate the deadline for trial under the speedy trial statutes, a court must exclude the day the State filed the information, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section. *State v. Fioramonti*, 22 Neb. App. 52, 847 N.W.2d 95 (2014).

During the period between dismissal of a first information and the filing of a second information which alleges the same charges, the speedy trial time is tolled and the time resumes upon the filing of the second information, including the day of its filing. *State v. Florea*, 20 Neb. App. 185, 820 N.W.2d 649 (2012).

Pursuant to subsection (4)(a) of this section, the time during which an appeal of a denial of a motion for discharge is pending on appeal is excludable from the speedy adjudication trial clock. *In re Interest of Shaquille H.*, 20 Neb. App. 141, 819 N.W.2d 741 (2012).

Pursuant to subsection (4)(b) of this section, where a juvenile's counsel agrees to reset an adjudication proceeding, such period of delay resulting therefrom is excludable. *In re Interest of Shaquille H.*, 20 Neb. App. 141, 819 N.W.2d 741 (2012).

As a general rule, a trial court's determination as to whether charges should be dismissed on statutory speedy trial grounds is a factual question which will be affirmed on appeal unless clearly erroneous. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Because the filing of a defendant's pro se plea in abatement tolled the statutory speedy trial clock, and the excludable period continued until the court ruled on the plea in abatement, when the defense counsel filed a subsequent plea in abatement, the clock was already stopped and such filing had no effect on the speedy trial calculation. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

If defendant is not brought to trial before the running of the statutory speedy trial time period, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Once defendant's pro se plea in abatement was filed by the clerk of the district court, the statutory speedy trial clock stopped until the trial court disposed of the pretrial motion, and it was irrelevant for speedy trial purposes whether defendant's plea in abatement was properly filed. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Speedy trial statute excludes all time between the filing of a defendant's pretrial motions and their disposition, regardless of the promptness or reasonableness of the delay; the excludable period commences on the day immediately after the filing of a defendant's pretrial motion, and final disposition occurs on the date the motion is granted or denied. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

To calculate the time for statutory speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any excludable time to determine the last day the defendant can be tried. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012).

Under subdivision (4)(b) of this section, the period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel shall be excluded from the calculation of the time for trial. *State v. Mortensen*, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

Under subsection (1) of this section, every person indicted or informed against for any offense shall be brought to trial within 6 months, unless the 6 months are extended by any period to be excluded in computing the time for trial. *State v. Mortensen*, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

29-1208.

If a defendant is not brought to trial before the running of the statutory speedy trial time period, as extended by excludable periods, he or she shall be entitled to his or her absolute discharge. *State v. Henshaw*, 19 Neb. App. 663, 812 N.W.2d 913 (2012); *State v. Mortensen*, 19 Neb. App. 220, 809 N.W.2d 793 (2011).

ANNOTATIONS

29-1209.

A writ of habeas corpus would not issue to permit collateral attack on a sentence for first degree sexual assault and first degree false imprisonment based on an alleged speedy trial violation that the prisoner waived by failing to file a motion for discharge. *Jones v. Nebraska Dept. of Corr. Servs.*, 21 Neb. App. 206, 838 N.W.2d 51 (2013).

29-1808.

The charging of alternative means of committing the same crime that are incongruous as a matter of law is a defect apparent on the face of the record. *State v. McIntyre*, 290 Neb. 1021, 863 N.W.2d 471 (2015).

29-1819.02.

Even if a defendant was not sufficiently advised of his or her rights concerning immigration consequences to pleading guilty, failure to give the advisement is not alone sufficient to entitle a convicted defendant to have the conviction vacated and the plea withdrawn; a defendant must also allege and show that he or she actually faces an immigration consequence which was not included in the advisement given. *State v. Llerenas-Alvarado*, 20 Neb. App. 585, 827 N.W.2d 518 (2013).

The word "prior" has been interpreted to require the immigration advisement to be given by the court immediately before the entry of a plea of guilty or nolo contendere to ensure the defendant is aware of the immigration consequences of the plea when the plea is made, and to ensure a defendant who is arraigned and subsequently pleads to a lesser charge is aware that the immigration advisement applies. *State v. Llerenas-Alvarado*, 20 Neb. App. 585, 827 N.W.2d 518 (2013).

29-1912.

The State did not fail to comply with subsection (1)(e) of this section when it did not provide the defendant with a chromatogram graphic printout of his blood test result during discovery, where chromatogram had to be interpreted by a forensic scientist to determine its validity, the defendant was provided with the laboratory result during discovery, and the scientist was questioned about the chromatogram during trial. *State v. Hashman*, 20 Neb. App. 1, 815 N.W.2d 658 (2012).

29-1913.

There is no obligation for the district court to suppress the evidence without a motion that the specific evidence be made available to conduct like tests or analyses. In the absence of any discovery motion, the trial court cannot know the precise issue presented and make the necessary factual findings in determining whether an order of discovery should be granted. And without a proper discovery order and a claim of the violation of such order, the court cannot properly determine whether the evidence subject to the order was, in fact, unavailable and whether it was unavailable due to neglect or intentional alteration. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

Under the plain language of this section, exclusion of the described tests or analyses is a mandatory sanction for violation of the discovery order issued under this section, in the event of unavailability due to neglect or intentional alteration as described in the section. *State v. Henry*, 292 Neb. 834, 875 N.W.2d 374 (2016).

29-2022.

Prejudice arising from the failure to comply with the requirements of this section does not alter the prejudice analysis required by *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). *State v. Sellers*, 290 Neb. 18, 858 N.W.2d 577 (2015).

29-2204.

For purposes of the authorized limits of an indeterminate sentence, both "mandatory minimum" as used in section 28-319.01(2) and "minimum" as used in section 28-105 in regard to a Class IB felony mean the lowest authorized minimum term of the indeterminate sentence. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

Minimum term of 30 months' imprisonment imposed by trial court on each of 10 counts of possession of child pornography exceeded minimum term of imprisonment provided by law, where minimum term could not exceed one-third of maximum term of 60 months' imprisonment. *State v. Landera*, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

ANNOTATIONS

29-2221.

The language of subsection (1) of this section does not require that all convictions enhanced pursuant to this section be served consecutively to each other. Unless the offense for which the defendant was convicted requires the sentence to run consecutively to other convictions, the court retains its discretion to impose a concurrent sentence. *State v. Lantz*, 290 Neb. 757, 861 N.W.2d 728 (2015).

29-2281.

In imposing a sentence, the court must state the precise terms of the sentence. Such requirement of certainty and precision applies to criminal sentences containing restitution orders, and a court's restitution order must inform the defendant whether the restitution must be made immediately, in specified installments, or within a specified period of time, not to exceed 5 years, as required under this section. *State v. Esch*, 290 Neb. 88, 858 N.W.2d 219 (2015).

Despite the existence of a plea agreement involving restitution, the trial court still must give meaningful consideration to the defendant's ability to pay the agreed-upon restitution. *State v. Mick*, 19 Neb. App. 521, 808 N.W.2d 663 (2012).

29-2306.

The relevant date under this section is the date the defendant files the application, not the date on which the court grants the application. *State v. Newcomer*, 23 Neb. App. 761, 875 N.W.2d 914 (2016).

29-2315.01.

By its language, this section clearly requires that an error proceeding cannot be brought until after a "final order" has been entered. The test of finality of an order or judgment for the purpose of appeal under this section is whether the particular proceeding or action was terminated by the order or judgment. *State v. Warner*, 290 Neb. 954, 863 N.W.2d 196 (2015).

The Nebraska Supreme Court has consistently maintained that strict compliance with this section is required to confer jurisdiction. *State v. Coupens*, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

This section does not permit an appeal by the State from any interlocutory ruling of the trial court in a criminal proceeding. *State v. Coupens*, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

This section grants the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. *State v. Coupens*, 20 Neb. App. 485, 825 N.W.2d 808 (2013).

29-2316.

Whether this section prevents an appellate court from reversing the judgment of the trial court turns on whether the trial court placed the defendant in jeopardy, not whether the Double Jeopardy Clause bars further action. *State v. Kleckner*, 291 Neb. 539, 867 N.W.2d 273 (2015).

29-2317.

Reference to the county court in sections 29-2317 to 29-2319 also applies to the separate juvenile court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Sections 29-2317 to 29-2319 outline exception proceedings which allow prosecuting attorneys to take exception to any ruling or decision of the county court by presenting to the court a notice of intent to take an appeal to the district court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

The language of this section requires the appeal of a county court judgment to the district court sitting as an appellate court. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

29-2407.

Although a judgment for costs in a criminal case is a lien upon a defendant's property, Nebraska statutes do not specifically authorize a setoff of costs owed to the court against proceeds of the defendant's bond. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

ANNOTATIONS

29-2412.

The credit authorized under former subsection (3) of this section is limited to the situation where the person is held in custody for nonpayment and does not provide for a \$90-per-day credit against costs for "extra" time incarcerated prior to sentencing. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

29-2801.

A parolee may seek relief through Nebraska's habeas corpus statute. *Caton v. State*, 291 Neb. 939, 869 N.W.2d 911 (2015).

The failure to attach a copy of the relevant commitment order to a petition for a writ of habeas corpus, as required by this section, does not prevent a court from exercising jurisdiction over that petition. *O'Neal v. State*, 290 Neb. 943, 863 N.W.2d 162 (2015).

The law-of-the-case doctrine applies to issues raised in a petition for a writ of habeas corpus if that same issue was raised in the appellate court on direct appeal. *Gray v. Kenney*, 22 Neb. App. 739, 860 N.W.2d 214 (2015).

29-3001.

The issuance of a mandate by a Nebraska appellate court is a definitive determination of the "conclusion of a direct appeal," and the "date the judgment of conviction became final," for purposes of subdivision (4)(a) of this section. *State v. Huggins*, 291 Neb. 443, 866 N.W.2d 80 (2015).

The 1-year period of limitation set forth in subsection (4) of this section is not a jurisdictional requirement and instead is in the nature of a statute of limitations. *State v. Crawford*, 291 Neb. 362, 865 N.W.2d 360 (2015).

The rule that when counsel is court appointed, the defendant does not have a constitutional right to counsel of his or her choice, is equally applicable when counsel is appointed in postconviction proceedings. *State v. Davis*, 23 Neb. App. 536, 875 N.W.2d 450 (2016).

29-3003.

When presented with a motion for postconviction relief that exists simultaneously with a motion seeking relief under another remedy, a court must dismiss the postconviction motion without prejudice when the allegations, if true, would constitute grounds for relief under the other remedy sought; the question is not whether the petitioner believes he or she is entitled to the other remedy. *State v. Harris*, 292 Neb. 186, 871 N.W.2d 762 (2015).

29-3004.

The rule that when counsel is court appointed, the defendant does not have a constitutional right to counsel of his or her choice, is equally applicable when counsel is appointed in postconviction proceedings. *State v. Davis*, 23 Neb. App. 536, 875 N.W.2d 450 (2016).

29-4120.

Pursuant to subsection (5) of this section, in cases of successive motions for DNA testing, the district court must make a new determination of whether the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition, but such determination shall be limited to a review of the evidence occurring since the last motion for DNA testing. *State v. Pratt*, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

Second, or successive, motions for DNA testing are permissible pursuant to the DNA Testing Act, specifically subsection (1)(c) of this section; however, res judicata principles would operate to bar a successive motion for DNA testing if the exact same issue was raised in both motions. *State v. Pratt*, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

When a defendant files successive motions for DNA testing pursuant to the DNA Testing Act, specifically subsection (5) of this section, a court is required to first consider whether the DNA testing sought was effectively not available at the time of the trial; if it was not, the court must then consider whether the DNA testing was effectively not available at the time the previous DNA testing was sought by the defendant. *State v. Pratt*, 20 Neb. App. 434, 824 N.W.2d 393 (2013).

ANNOTATIONS

29-4008.

The phrase "knowingly and willfully" in this section applies only to the furnishing of false and misleading information and not to the failure to update information. *State v. Clark*, 22 Neb. App. 124, 849 N.W.2d 151 (2014).

30-810.

This section does not govern the distribution of proceeds from a survival claim brought on behalf of the decedent's estate, which continued a decedent's cause of action for the decedent's injuries that occurred before death. In re Estate of Panec, 291 Neb. 46, 864 N.W.2d 219 (2015).

A wrongful death action brought in the name of a 6-year-old child's mother, as representative of the child's estate, was brought for the exclusive benefit of the child's next of kin, and thus, the child's father, as next of kin and beneficiary of the child's estate, was properly included in the court's instruction to the jury regarding the allocation of percentages of contributory negligence, even though the father was not brought into the action either as a claimant within the meaning of the statute that governed the defense of contributory negligence or as a third-party defendant. *Curtis v. States Family Practice*, 20 Neb. App. 234, 823 N.W.2d 224 (2012).

30-1601.

Subsection (2) of this section authorizes a protected person's close family members to appeal from a final order in a conservatorship proceeding if they filed an objection and the county court appointed a conservator. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

When a protected person dies pending an appeal initiated by a close family member who filed an objection, whether the protected person needed a conservator is a moot issue unless the family member asks the appellate court to take judicial notice of a proceeding that shows the issue is not moot. Absent that showing, the protected person's death abates the family member's appeal, but it does not extinguish the cause of action or affect the validity of the underlying orders appointing a conservator. In re Conservatorship of Franke, 292 Neb. 912, 875 N.W.2d 408 (2016).

30-2303.

Grandchildren are "issue of parents" under subsection (3) of this section according to the definition of "issue of a person" found in section 30-2209(23). In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

Modern per stirpes distribution begins division of shares of the estate at the first generation where there is living issue. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

30-2306.

There must be at least one survivor in a degree of kinship to apply the phrase "by right of representation." In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

When an estate is divided "by representation" as provided for in this section into as many shares as there are surviving heirs in the nearest degree of kinship, the court looks first to the decedent's siblings, then to the decedent's siblings' children, and on down the generational line until reaching a generation containing surviving heirs. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

30-2314.

The concepts of section 30-2722 should inform the interpretation of this section regarding the evidence necessary to establish the source of property owned by the surviving spouse. In re Estate of Ross, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

When there is reason to doubt the credibility of the surviving spouse's testimony, the court need not accept his or her testimony that the source of the accounts was other than the decedent. In re Estate of Ross, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

30-2346.

When a conservator or guardian, not the testator, sells specifically devised property during the testator's lifetime, no ademption occurs. The proceeds of the sale are not included in the testator's residuary estate, but, rather, are

ANNOTATIONS

given to the specific devisee to honor the specific devise. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-2431.

Contestants of a will have the burden of establishing undue influence and carry the ultimate burden of persuasion. In re Estate of Clinger, 292 Neb. 237, 872 N.W.2d 37 (2015).

30-2454.

In order to remove a personal representative for cause, an interested person must file a petition for removal; an oral request at a hearing is insufficient for removal. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

In the absence of a petition for removal of the personal representative and notice and hearing thereupon, the court cannot remove a personal representative. In re Estate of Evans, 20 Neb. App. 602, 827 N.W.2d 314 (2013).

Under subsection (b) of this section, the county court did not err in removing a personal representative who did not file inventory within the time period described in this section, failed to keep the remaining heirs apprised of the status of the inventory despite several requests for information, may have had a conflict of interest with the estate, failed to obtain an appraisal for the home despite requests from other heirs to do so, and claimed ownership of joint bank accounts which may have contained comingled funds. In re Estate of Webb, 20 Neb. App. 12, 817 N.W.2d 304 (2012).

30-2485.

A claimant who has a claim for the proceeds of a decedent's liability insurance under subsection (c)(2) of this section is entitled to have the estate reopened for the limited purpose of service of process in the civil action filed to establish liability and liability insurance coverage. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

Before suit can be filed, a closed estate, with a discharged personal representative, must be reopened and a personal representative appointed (or reappointed) even when seeking only liability insurance proceeds. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

The time limits under this section for presentation of claims are not applicable when the recovery sought is solely limited to the extent of insurance protection. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

This section does not allow the institution of proceedings against a discharged personal representative while the estate is closed. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

30-2486.

The Nebraska Probate Code provides two methods of presenting a claim against a decedent's estate: A claim can be presented by filing a written statement thereof with the clerk of the probate court or by commencing a proceeding against the personal representative in any court which has jurisdiction. Estate of Hansen v. Bergmeier, 20 Neb. App. 458, 825 N.W.2d 224 (2013).

30-2608.

A party seeking to establish guardianship must file a petition in county court. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

30-2619.

In a guardianship proceeding, where an objector has no concerns for the ward's welfare but only concerns of its own potential financial expectancy, such concerns do not give the objector standing to challenge a guardianship as "any person interested in [the ward's] welfare" under this section. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

ANNOTATIONS

30-2626.

Subsection (e) of this section provides that the temporary guardianship shall terminate after 90 days or earlier if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if a proper order for a permanent guardianship is entered. In re Guardianship & Conservatorship of Forster, 22 Neb. App. 478, 856 N.W.2d 134 (2014).

30-2628.

Pursuant to subsection (c) of this section, if a guardian has been appointed and an attorney in fact has been designated and authorized under a valid power of attorney for health care, the attorney in fact's authority to make health care decisions supersedes the guardian's authority to make such decisions. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

Subsection (c) of this section does not preclude a court from considering a ward's best interests and revoking or setting aside a health care power of attorney in favor of a guardianship when the facts support such action. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-2633.

Where the objector has an interest in the welfare of the ward because the objector would have an obligation to support the ward during his or her lifetime if the ward's funds are mismanaged, then that objector would have standing to contest the conservatorship. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

30-2645.

Designation as a beneficiary in a will, prior to the testator's death, does not alone establish enough financial interest in a ward's welfare to establish standing to contest a conservatorship. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

In a conservatorship proceeding, where an objector has no concerns for the ward's welfare but only concerns of its own potential financial expectancy, such concerns do not give the objector standing to challenge a guardianship as "[a]ny person interested in the [ward's] welfare" under this section. In re Guardianship & Conservatorship of Barnhart, 290 Neb. 314, 859 N.W.2d 856 (2015).

30-2722.

The concepts of this section should inform the interpretation of section 30-2314 regarding the evidence necessary to establish the source of property owned by the surviving spouse. In re Estate of Ross, 19 Neb. App. 355, 810 N.W.2d 435 (2011).

30-2726.

The purpose of this section is to alert the personal representative of the need to recover nonprobate assets and to trigger the personal representative's duty and authority to initiate proceedings to do so. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

This section protects the beneficiaries of such nonprobate assets from incurring liability for claims made against the estate more than 1 year after the death of the decedent. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

This section requires more than notice—it requires a written demand upon the personal representative before a proceeding to recover nonprobate assets may be commenced. In re Estate of Lorenz, 292 Neb. 543, 873 N.W.2d 396 (2016).

30-3420.

Subsection (5) of this section does not preclude a court from considering a ward's best interests and revoking or setting aside a health care power of attorney in favor of a guardianship when the facts support such action. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

ANNOTATIONS

Unless the power of attorney provides otherwise, a valid power of attorney for health care supersedes any guardianship or conservatorship proceedings to the extent the proceedings involve the right to make health care decisions for the protected person. In re Guardianship & Conservatorship of Mueller, 23 Neb. App. 430, 872 N.W.2d 906 (2015).

30-3805.

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

An attorney's duty to report any danger to the trust property becomes immediate when he or she knows or should know that such danger exists rather than when an annual report is due. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty under this section to keep beneficiaries of the trust reasonably informed of the material facts necessary for them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The Nebraska Uniform Trust Code provides deference to the terms of the trust, but that deference does not extend to those duties described in this section or otherwise required by statute. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

30-3841.

A document by which a settlor purports to revoke a revocable trust is a term of that trust within the meaning of this section. In re Trust of O'Donnell, 19 Neb. App. 696, 815 N.W.2d 640 (2012).

30-3866.

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty to administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

30-3875.

To further help prevent conflicts of interests, trustees are required to keep adequate records of the trust administration and to keep trust property separate from the trustee's property. In re Estate of Robb, 21 Neb. App. 429, 839 N.W.2d 368 (2013).

30-3878.

A reasonable person acting in good faith and in the interests of the beneficiaries would not wait until an annual report was due before informing the beneficiaries that the trust assets were in danger of being lost, but would instead

ANNOTATIONS

inform the beneficiaries of the material facts immediately in order to allow them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

An attorney's duty to report any danger to the trust property becomes immediate when he or she knows or should know that such danger exists rather than when an annual report is due. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

In drafting a trust, an attorney cannot abrogate his or her duty under this section to keep beneficiaries of the trust reasonably informed of the material facts necessary for them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee's actions in providing a false address to the insurers of life insurance policies, which were the sole trust property, prevented the beneficiaries from receiving material facts necessary for them to protect their interests. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

30-3890.

Under subsection (b) of this section, the court has various options available to remedy a violation by a trustee of a duty the trustee owes to a beneficiary. *In re Louise v. Steinhofel Trust*, 22 Neb. App. 293, 854 N.W.2d 792 (2014).

30-3897.

An exculpatory clause in a trust agreement is invalid where the attorney who drafted the trust agreement never met with the settlor or explained the terms of the trust and the respective duties of each party. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

The beneficiaries alleged sufficient facts for a court to find that the trustee acted in bad faith or reckless indifference to the purposes of the trust or the interests of the beneficiaries by providing a false address to the insurers of life insurance policies, which were the sole trust property. *Rafert v. Meyer*, 290 Neb. 219, 859 N.W.2d 332 (2015).

31-224.

In this section, the phrase "at least" prior to "once a year" indicates that a landowner may have a duty to clear the ditch more than once during the specified period of March 1 to April 15, if the flow of water again becomes obstructed during this period. *Barthel v. Liermann*, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

There is nothing in this section that can be interpreted to require a landowner to clean a drainage ditch outside the March 1 to April 15 period if the flow of water becomes obstructed at any other time during the year. *Barthel v. Liermann*, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

This section imposes a duty upon a landowner to clean a drainage ditch once a year, between March 1 and April 15. *Barthel v. Liermann*, 21 Neb. App. 730, 842 N.W.2d 624 (2014).

33-103.

A trial court's order requiring a habeas petitioner to pay, in advance, fees to docket an appeal from the denial of a petition, did not comply with the statute requiring payment of fees in advance, except in habeas corpus proceedings, and the appellate rule that fees in habeas corpus proceedings be collected at the conclusion of the proceeding. *Jones v. Nebraska Dept. of Corr. Servs.*, 21 Neb. App. 206, 838 N.W.2d 51 (2013).

34-301.

An action to ascertain and permanently establish corners and boundaries of land under this section is an equity action. *Curry v. Furby*, 20 Neb. App. 736, 832 N.W.2d 880 (2013).

An action to ascertain and permanently establish corners and boundaries of land under this section is an equity action. *Oppliger v. Vineyard*, 19 Neb. App. 172, 803 N.W.2d 786 (2011).

Nebraska law provides that boundaries that have been mutually recognized and acquiesced in for a period of 10 years can be legal boundaries. *Oppliger v. Vineyard*, 19 Neb. App. 172, 803 N.W.2d 786 (2011).

ANNOTATIONS

36-103.

To establish the part performance exception to the statute of frauds, the alleged acts of performance must speak for themselves. *Ficke v. Wolken*, 291 Neb. 482, 868 N.W.2d 305 (2015).

It is the general rule that an oral agreement for the transfer of title to real estate is voidable under the statute of frauds. *Ficke v. Wolken*, 22 Neb. App. 587, 858 N.W.2d 249 (2014).

36-105.

It is the general rule that an oral agreement for the transfer of title to real estate is voidable under the statute of frauds. *Ficke v. Wolken*, 22 Neb. App. 587, 858 N.W.2d 249 (2014).

37-729.

A lake owners' association, and not its members who owned homes within the association, owned the lake, and thus, a cause of action by a member's guest against a member and her parents for an alleged failure to warn of the dangerous condition of the lake was not one for premises liability; therefore, Nebraska's Recreation Liability Act did not apply to bar recovery against the member for catastrophic injuries sustained when the guest dove into the lake from the member's pontoon. *Hodson v. Taylor*, 290 Neb. 348, 860 N.W.2d 162 (2015).

The members of a lake owners' association had no control over the lake and, thus, were not occupants of the lake, as required for a cause of action brought by a member's guest for an alleged failure to warn of the dangerous condition of the lake to sound in premises liability; therefore, Nebraska's Recreation Liability Act did not apply to bar the guest's recovery against the member for catastrophic injuries sustained when the guest dove into the lake from the member's pontoon. *Hodson v. Taylor*, 290 Neb. 348, 860 N.W.2d 162 (2015).

37-730.

The Recreation Liability Act applies to bar liability only in premises liability cases. *Hodson v. Taylor*, 290 Neb. 348, 860 N.W.2d 162 (2015).

39-1327.

Any rights or claims to air, light, and view that were held by a previous property owner terminate with the purchase of that portion of the property by the department. *Craig v. State*, 19 Neb. App. 78, 805 N.W.2d 663 (2011).

39-1801.

A motorist commits a misdemeanor by proceeding down a county road that has been temporarily closed and has suitable barricades and signs posted, thus giving an officer probable cause to stop the vehicle. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

42-349.

In order to maintain an action for divorce in Nebraska, one of the parties must have had actual residence in this state with a bona fide intention of making this state his or her permanent home for at least 1 year prior to the filing of the complaint. *Catlett v. Catlett*, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

The requirement that one party have "actual residence in this state" means that one party must have a "bona fide domicile" in the state for 1 year before the commencement of a dissolution action. *Catlett v. Catlett*, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

42-351.

An order helping a party pay for his or her attorney's work on appeal is an order in aid of the appeal process under subsection (2) of this section. *Brozek v. Brozek*, 292 Neb. 681, 874 N.W.2d 17 (2016).

Generally, once an appeal has been perfected, the trial court no longer has jurisdiction, although the district court retains jurisdiction under subsection (2) of this section for certain matters. *Furstenfeld v. Pepin*, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

ANNOTATIONS

Subsection (2) of this section does not grant authority to hear and determine anew the very issues then pending on appeal and to enter permanent orders addressing these issues during the appeal process. *Furstenfeld v. Pepin*, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

The word "support" in this section is not limited to child support and, in fact, applies to spousal support. *Furstenfeld v. Pepin*, 23 Neb. App. 673, 875 N.W.2d 468 (2016).

Satisfaction of the residency requirement in section 42-349 is required to confer subject matter jurisdiction on a district court hearing a dissolution proceeding. *Catlett v. Catlett*, 23 Neb. App. 136, 869 N.W.2d 368 (2015).

42-364.

The requirement in this section that a court make a specific finding of best interests before awarding joint custody does not apply in paternity actions where the parties were never married. *Aguilar v. Schulte*, 22 Neb. App. 80, 848 N.W.2d 644 (2014).

Subsection (3)(b) of this section requires that in dissolution cases, if the parties do not agree to joint custody in a parenting plan, the trial court can award joint custody if it specifically finds, after a hearing in open court, that it is in the best interests of the child. *Hill v. Hill*, 20 Neb. App. 528, 827 N.W.2d 304 (2013).

Although there was no evidence that the mother was currently engaged in abusive behaviors or an abusive relationship, the trial court acted within its discretion in finding that the father's custody was in the best interests of the child based on the mother's history of domestic violence, the previous removal of a child, and the mother's questionable rehabilitation. *State on behalf of Keegan M. v. Joshua M.*, 20 Neb. App. 411, 824 N.W.2d 383 (2012).

42-364.16.

Generally, child support payments should be set according to the guidelines. *McDonald v. McDonald*, 21 Neb. App. 535, 840 N.W.2d 573 (2013).

42-365.

Equitable property division is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. *Gangwish v. Gangwish*, 267 Neb. 901, 678 N.W.2d 503 (2004); *Mathews v. Mathews*, 267 Neb. 604, 676 N.W.2d 42 (2004); *Sughrone v. Sughrone*, 19 Neb. App. 912, 815 N.W.2d 210 (2012); *Ging v. Ging*, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Alimony should not be used to equalize the incomes of the parties or to punish one of the parties. *Patton v. Patton*, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

Disparity in income or potential income may partially justify an award of alimony. *Patton v. Patton*, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In addition to the specific criteria listed in this section, in considering alimony upon a dissolution of marriage, a court is to consider the income and earning capacity of each party, as well as the general equities of each situation. *Patton v. Patton*, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness. *Patton v. Patton*, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

The equitable division of property is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. *Patton v. Patton*, 20 Neb. App. 51, 818 N.W.2d 624 (2012).

In addition to the specific criteria listed in this section, in dividing property and considering alimony upon a dissolution of marriage, a court is to consider the income and earning capacity of each party, as well as the general equities of each situation. *Titus v. Titus*, 19 Neb. App. 751, 811 N.W.2d 318 (2012); *Grams v. Grams*, 9 Neb. App. 994, 624 N.W.2d 42 (2001).

Factors which should be considered by a court in determining alimony include: (1) the circumstances of the parties; (2) the duration of the marriage; (3) the history of contributions to the marriage, including contributions to

ANNOTATIONS

the care and education of the children, and interruption of personal careers or educational opportunities; and (4) the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of each party. *Zoubenko v. Zoubenko*, 19 Neb. App. 582, 813 N.W.2d 506 (2012).

The criteria listed in this statute are not an exhaustive list, and the income and earning capacity of each party as well as the general equities of each situation must be considered. *Zoubenko v. Zoubenko*, 19 Neb. App. 582, 813 N.W.2d 506 (2012).

42-366.

Although the actual appreciation or increase in value of a state employee's pension occurred during the marriage, such increase was not due to the efforts or contribution of marital funds by the parties during the marriage, but, rather, was guaranteed prior to the marriage by operation of section 84-1301(17). Therefore, such increase was not marital property. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

An increase in value in the separate property of a spouse, not attributable in any manner to any contribution of funds, property, or effort by either of the spouses, constitutes separate property. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

In order to determine what portion of a party's retirement account is nonmarital property in a divorce, the court examines to what extent the appreciation in the separate premarital portion of the retirement account was caused by the funds, property, or efforts of either spouse. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

Deferred compensation, including pension plans, retirement plans, and annuities, is property for purposes of determining the marital estate under subsection (8) of this section. *Wiech v. Wiech*, 23 Neb. App. 370, 871 N.W.2d 570 (2015).

42-367.

A court may direct costs against either party in an action for dissolution of marriage. *Barth v. Barth*, 22 Neb. App. 241, 851 N.W.2d 104 (2014).

42-903.

Subsection (1) of this section does not impose any limitation on the time during which a victim of domestic abuse resulting in bodily injury can file a petition and affidavit seeking a protection order. However, this does not mean that the remoteness of the abuse is irrelevant to the issue of whether a protection order is warranted. *Sarah K. v. Jonathan K.*, 23 Neb. App. 471, 873 N.W.2d 428 (2015).

The term "physical menace" within the meaning of the abuse definition means a physical threat or act and requires more than mere words. *Beemer v. Hammer*, 20 Neb. App. 579, 826 N.W.2d 599 (2013).

42-924.

A protection order pursuant to this section is analogous to an injunction. *Hronek v. Brosnan*, 20 Neb. App. 200, 823 N.W.2d 204 (2012).

43-106.01.

A duly executed revocation of a relinquishment and consent to adoption delivered to a licensed child placement agency within a reasonable time after execution of the relinquishment and before the agency has, in writing, accepted full responsibility for the child, as required by statute, is effective to invalidate the original relinquishment and consent. *In re Interest of Nery V. et al.*, 20 Neb. App. 798, 832 N.W.2d 909 (2013).

The rights of the relinquishing parent are terminated when the Nebraska Department of Health and Human Services, or a licensed child placement agency, accepts responsibility for the child in writing. *In re Interest of Nery V. et al.*, 20 Neb. App. 798, 832 N.W.2d 909 (2013).

There are four requirements for a valid and effective revocation of a relinquishment of parental rights: (1) There must be a duly executed revocation of a relinquishment, (2) the revocation must be delivered to a licensed child placement agency or the Nebraska Department of Health and Human Services, (3) delivery of the revocation must be within a reasonable time after execution of the relinquishment, and (4) delivery of the revocation must occur before the agency has, in writing, accepted full responsibility for the child. *In re Interest of Nery V. et al.*, 20 Neb. App. 798, 832 N.W.2d 909 (2013).

ANNOTATIONS

When a parent's attempted revocation of his or her relinquishment of parental rights is not done in a reasonable time after the relinquishment, the relinquishment becomes irrevocable. In re Interest of Nery V. et al., 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-247.

Under this section, once a minor is adjudged to be within the jurisdiction of the juvenile court, the juvenile court shall have exclusive jurisdiction as to any such juvenile and as to the parent, guardian, or custodian of the juvenile. In re Interest of Miah T. & DeKandyce H., 23 Neb. App. 592, 875 N.W.2d 1 (2016).

This section grants to the juvenile court exclusive jurisdiction as to any juvenile defined in subsection (3) and, under subsection (5), jurisdiction over the parent, guardian, or custodian who has custody of such juvenile. In re Interest of Trenton W. et al., 22 Neb. App. 976, 865 N.W.2d 804 (2015).

Subsection (3)(a) of this section requires that the State prove the allegations set forth in the adjudication petition by a preponderance of the evidence in cases involving both non-Indian and Indian children. In re Interest of Mischa S., 22 Neb. App. 105, 847 N.W.2d 749 (2014).

The juvenile court shall have exclusive original jurisdiction as to the parties and proceedings provided in subsections (5), (6), and (8) of this section. In re Interest of Jordana H. et al., 22 Neb. App. 19, 846 N.W.2d 686 (2014).

At the adjudication stage, in order for a juvenile court to assume jurisdiction of a minor child under subsection (3)(a) of this section, the State must prove the allegations of the petition by a preponderance of the evidence, and the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Compulsory education statutes and juvenile code statutes regarding the neglect of children generally do not pertain to the same subject matter and should not be construed in *pari materia*. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subsection (3)(a) of this section establishes the juvenile court's jurisdiction over a minor child, while sections 79-201 and 79-210 make the minor child's parents or legal guardians culpable for the child's truancy. The county attorney is free to decide whether to proceed utilizing the juvenile code or the compulsory education laws. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

The school's duty to provide services in an attempt to address excessive absenteeism comes from section 79-209, relating to compulsory attendance and the possibility of a parent's being subjected to a criminal sanction. The school has no duty to provide reasonable efforts before an adjudication under subsection (3)(a) of this section of the juvenile code. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subsection (9) of this section provides the juvenile court jurisdiction over the guardianship proceedings of a juvenile described elsewhere within the code. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

Although the State need not prove that the juvenile has suffered physical harm to find the juvenile to be within the meaning of subsection (3)(a) of this section, the State must establish that without intervention, there is a definite risk of future harm. In re Interest of Chloe P., 21 Neb. App. 456, 840 N.W.2d 549 (2013).

Evidence that a child's mother took an unprescribed morphine pill was insufficient to adjudicate the child when there was no evidence that the child was affected by the mother's ingestion of the pill or any other evidence that the mother's taking the pill placed the child at risk for harm. In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

Evidence that a nearly 2-year-old child was left unsupervised outside for a few minutes was insufficient to establish a definite risk of future harm. In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

43-271.

An appellate court's criminal speedy trial jurisprudence with respect to the calculations of the running of the speedy trial clock is applicable in the juvenile context. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

ANNOTATIONS

Juveniles being held in custody are to receive an adjudication hearing as soon as *possible*, whereas juveniles not being held in custody are to receive an adjudication hearing as soon as *practicable*; both sets of juveniles should receive an adjudication hearing within a 6-month period after the petition is filed pursuant to this section, but a statutory scheduling preference is granted to those juveniles that are in custody pending adjudication. In re Interest of Shaquille H., 20 Neb. App. 141, 819 N.W.2d 741 (2012).

43-274.

The mandate that allegations under section 43-247(1), (2), and (4) be made with the same specificity as a criminal complaint merely reconciles the pleading practice regarding juvenile offenders with that of adult criminals. In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

The pleading standard for allegations under section 43-247(3) stems from the requirements of due process, and the factual allegations must give a parent notice of the bases for seeking to prove that the child is within the meaning of section 43-247(3)(a). In re Interest of Taeven Z., 19 Neb. App. 831, 812 N.W.2d 313 (2012).

A guardian ad litem appointed by the juvenile court does not have the authority to initiate a juvenile court case by filing a petition alleging that a child is within the meaning of section 43-247(3)(a). In re Interest of David M. et al., 19 Neb. App. 399, 808 N.W.2d 357 (2011).

43-276.

Considering the statutory factors on a motion to transfer to juvenile court is a balancing test by which public protection and societal security are weighed against the practical and nonproblematical rehabilitation of the juvenile. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

In case involving multiple counts of possession of child pornography, the district court properly weighed all applicable statutory factors in denying juvenile defendant's motion to transfer his case to juvenile court; in addition to the fact that there would likely be insufficient time to treat the defendant in the juvenile system before he aged out of the juvenile court's jurisdiction, the district court considered the defendant's maturity, as well as the fact that the motivation for the offenses appeared to be the desire to view and distribute pornography, predominantly involving young children, which preference was potentially associated with someone afflicted with pedophilia. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

In order to retain juvenile proceedings in the district court, the court does not need to resolve every statutory factor against the juvenile; moreover, there are no weighted factors and no prescribed method by which more or less weight is assigned to each specific factor. State v. Landera, 20 Neb. App. 24, 816 N.W.2d 20 (2012).

43-279.01.

A father's due process rights were not violated where he was advised during the adjudication phase of the proceedings of his rights listed in this section and was advised of the nature of the juvenile court proceedings and possible consequences, including the possibility that his parental rights could ultimately be terminated, but he was not advised again during the termination of parental rights phase, nor was the court required to do so. In re Interest of Aaliyah M. et al., 21 Neb. App. 63, 837 N.W.2d 98 (2013).

A juvenile court need not necessarily advise a parent during the parent's initial appearance in court, or during an initial detention hearing, of the nature of the proceedings, of the parent's rights, or of the possible consequences after adjudication, pursuant to the statutory language. Instead, a juvenile court must provide this advisement prior to or at an adjudication hearing where a parent enters a plea to the allegations in the petition. In re Interest of Damien S., 19 Neb. App. 917, 815 N.W.2d 648 (2012).

An incarcerated father's due process rights were violated in a proceeding in which a motion was made to terminate his parental rights where he was not represented by counsel, he was not present at the adjudication and termination hearing, and he did not waive those rights, and the juvenile court otherwise failed to provide him an opportunity to refute or defend against the allegations of the petition, such as implementing procedures to afford him an opportunity to participate in the hearing, confront or cross-examine adverse witnesses, or present evidence on his behalf; although the juvenile court issued transport orders and a summons to enable the father to attend, the court not only took no further action upon receipt of the sheriff's request for a writ of habeas corpus rather than a transport order, but it also proceeded with the hearing without comment on the record as to either the father's or his attorney's absence. In re Interest of Davonest D. et al., 19 Neb. App. 543, 809 N.W.2d 819 (2012).

ANNOTATIONS

43-283.01.

Once a plan of reunification has been ordered to correct the conditions underlying an adjudication, the plan must be reasonably related to the objective of reuniting the parents with the children. In re Interest of Ethan M., 19 Neb. App. 259, 809 N.W.2d 804 (2011).

43-284.

When a juvenile is adjudicated under subsection (3) of section 43-247, the juvenile court may permit the juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to the care and custody of the Department of Health and Human Services. In re Interest of Alex F. & Tony F., 23 Neb. App. 195, 870 N.W.2d 150 (2015).

43-285.

Under subsection (2) of this section, following the adjudication of a juvenile, the juvenile court may order the Department of Health and Human Services 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, and the court may approve the plan, modify the plan, order an alternative plan, or implement another plan that is in the juvenile's best interests. In re Interest of Alex F. & Tony F., 23 Neb. App. 195, 870 N.W.2d 150 (2015).

Under subsection (3) of this section, the juvenile court is authorized to establish guardianships for juveniles in the custody of the Department of Health and Human Services without resorting to a proceeding under the probate code. In re Interest of Brianna B., 21 Neb. App. 657, 842 N.W.2d 191 (2014).

The State has the burden of proving that a case plan proposed by the Department of Health and Human Services is in the child's best interests. In re Interest of Ethan M., 19 Neb. App. 259, 809 N.W.2d 804 (2011).

43-292.

In order to terminate an individual's parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the children's best interests. In re Interest of Joshua R. et al., 265 Neb. 374, 657 N.W.2d 209 (2003); In re Interest of Michael B. et al., 258 Neb. 545, 604 N.W.2d 405 (2000); In re Interest of Kalie W., 258 Neb. 46, 601 N.W.2d 753 (1999); In re Interest of Emerald C. et al., 19 Neb. App. 608, 810 N.W.2d 750 (2012); In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Any one of the 11 separate codified grounds can serve as the basis for the termination of parental rights when coupled with evidence that termination is in the best interests of the child. In re Interest of Giavonna G., 23 Neb. App. 853, 876 N.W.2d 422 (2016).

If an appellate court determines that the lower court correctly found that termination of parental rights is appropriate under one of the statutory grounds, the appellate court need not further address the sufficiency of the evidence to support termination under any other statutory ground. In re Interest of Giavonna G., 23 Neb. App. 853, 876 N.W.2d 422 (2016).

When parental rights are terminated based on the parent subjecting the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse, pursuant to subsection (9) of this section, a prior adjudication order is not required. In re Interest of Gavin S. & Jordan S., 23 Neb. App. 401, 873 N.W.2d 1 (2015).

Generally, when termination is sought under subsections of this section other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile, as it would show abandonment, neglect, unfitness, or abuse; however, this is not always the case, as statutory grounds are based on a parent's past conduct, but the best interests element focuses on the future well-being of the child. In re Interest of Mya C. et al., 23 Neb. App. 383, 872 N.W.2d 56 (2015).

The State needs to provide reasonable efforts to reunify a family only when terminating parental rights under subsection (6) of this section. In re Interest of Mya C. et al., 23 Neb. App. 383, 872 N.W.2d 56 (2015).

A defective adjudication does not preclude a termination of parental rights under subsections (1) through (5) of this section, because no adjudication is required to terminate pursuant to those subsections, as long as due process safeguards are met. In re Interest of Keisha G., 21 Neb. App. 472, 840 N.W.2d 562 (2013).

ANNOTATIONS

The State failed to prove that the parent's drug use was detrimental to the child, and thus, there was insufficient evidence to support a termination of parental rights under subsection (4) of this section. In re Interest of Keisha G., 21 Neb. App. 472, 840 N.W.2d 562 (2013).

In a hearing on the termination of parental rights without a prior adjudication hearing, where such termination is sought under subsections (1) through (5) of this section, such proceedings must be accompanied by due process safeguards. In re Interest of Aaliyah M. et al., 21 Neb. App. 63, 837 N.W.2d 98 (2013).

Generally, when termination of parental rights is sought under subsections of this section other than subsection (7), the evidence adduced to prove the statutory grounds for termination will also be highly relevant to the best interests of the juvenile. In re Interest of Emerald C. et al., 19 Neb. App. 608, 810 N.W.2d 750 (2012).

If a parent has been afforded procedural due process for a hearing to terminate parental rights, allowing a parent who is incarcerated or otherwise confined in custody of a government to attend the termination hearing is within the discretion of the trial court, whose opinion on appeal will be upheld in the absence of an abuse of discretion. In re Interest of Davonest D. et al., 19 Neb. App. 543, 809 N.W.2d 819 (2012).

Parental physical presence is unnecessary for a hearing to terminate parental rights, provided that the parent has been afforded procedural due process for the hearing. In re Interest of Davonest D. et al., 19 Neb. App. 543, 809 N.W.2d 819 (2012).

43-292.01.

A guardian ad litem appointed for a parent pursuant to this section is entitled to participate fully in the proceeding to terminate parental rights. In re Interest of Emerald C. et al., 19 Neb. App. 608, 810 N.W.2d 750 (2012).

43-295.

While an appeal is pending, this section provides for the juvenile court's continuing jurisdiction over the custody or care of the child, which includes visitation. In re Interest of Angeleah M. & Ava M., 23 Neb. App. 324, 871 N.W.2d 49 (2015).

43-2,106.01.

Had the Legislature intended that appeals under subsection (2)(d) of this section be made to the Court of Appeals, that subsection would have referred to sections 29-2315.01 to 29-2316, instead of to sections 29-2317 to 29-2319. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Most cases arising under subsection (1) of this section are governed by section 25-1912, which sets forth the requirements for appealing district court decisions. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

Once jeopardy has attached in a delinquency case, an appeal may only be taken under the procedures of sections 29-2317 to 29-2319. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

The plain language of subsection (2)(d) of this section carves out an exception for delinquency cases in which jeopardy has attached. In re Interest of Lori S., 20 Neb. App. 152, 819 N.W.2d 736 (2012).

43-532.

State policy is to assist juveniles in the least restrictive method consistent with their needs. In re Interest of Skylar E., 20 Neb. App. 725, 831 N.W.2d 358 (2013).

43-1314.

A foster parent has the right to participate under this section whether or not the foster parent is a party in the juvenile case. In re Interest of Enyce J. & Eternity M., 291 Neb. 965, 870 N.W.2d 413 (2015).

A foster parent's right to participate under this section does not extend to discovery, questioning, cross-examining, or calling witnesses beyond what is personally applicable to the foster parent's own qualifications. In re Interest of Enyce J. & Eternity M., 291 Neb. 965, 870 N.W.2d 413 (2015).

ANNOTATIONS

43-1411.

An emotional bond with one's biological father is not the type of relationship contemplated by this section, nor is it the type of support with which the State has a reasonable interest. *Bryan M. v. Anne B.*, 292 Neb. 725, 874 N.W.2d 824 (2016).

This section does not violate the Equal Protection Clause because a mother can bring paternity actions on behalf of the child for up to 18 years, while fathers have only 4 years to bring paternity actions; this section treats mothers and putative fathers identically by imposing a 4-year limitations period on paternity actions brought by parents asserting their own rights. *Bryan M. v. Anne B.*, 292 Neb. 725, 874 N.W.2d 824 (2016).

43-1412.01.

This section permits, but does not require, a court to set aside a child support obligation when paternity has been disestablished. It does not authorize any change in child support without such disestablishment of paternity. *Stacy M. v. Jason M.*, 290 Neb. 141, 858 N.W.2d 852 (2015).

43-1504.

A determination that the proceeding is at an advanced stage is no longer a valid basis for finding good cause to deny a motion to transfer jurisdiction to a tribal court. *In re Interest of Tavian B.*, 292 Neb. 804, 874 N.W.2d 456 (2016).

A motion to transfer to tribal court was not made at an advanced stage of the termination of parental rights proceedings where a previous motion for termination was dismissed for failure to include the Nebraska Indian Child Welfare Act allegations; thus, the current motion for termination constituted a separate and distinct proceeding, and the motion to transfer was filed very shortly after the filing of the current motion for termination. *In re Interest of Jayden D. & Dayten J.*, 21 Neb. App. 666, 842 N.W.2d 199 (2014).

A denial of a transfer to tribal court under the Indian Child Welfare Act is reviewed for an abuse of discretion. *In re Interest of Melaya F. & Melysse F.*, 19 Neb. App. 235, 810 N.W.2d 429 (2011); *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005).

That a state court may take jurisdiction under the Indian Child Welfare Act does not necessarily mean that it should do so, because the court should consider the rights of the child, the rights of the tribe, and the conflict of law principles, and should balance the interests of the state and the tribe. *In re Interest of Melaya F. & Melysse F.*, 19 Neb. App. 235, 810 N.W.2d 429 (2011); *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005).

The party opposing a transfer of jurisdiction to the tribal courts under the Indian Child Welfare Act has the burden of establishing that good cause not to transfer the matter exists. *In re Interest of Melaya F. & Melysse F.*, 19 Neb. App. 235, 810 N.W.2d 429 (2011); *In re Interest of Brittany C. et al.*, 13 Neb. App. 411, 693 N.W.2d 592 (2005).

43-1505.

In a foster care placement determination involving an Indian child, the failure to make findings under subsection (4) of this section is harmless error where a de novo review indicates that evidence supports these findings. *In re Interest of Mischa S.*, 22 Neb. App. 105, 847 N.W.2d 749 (2014).

In adjudication cases, the standard of proof for the active efforts element in subsection (4) of this section is proof by a preponderance of the evidence. *In re Interest of Mischa S.*, 22 Neb. App. 105, 847 N.W.2d 749 (2014).

The active efforts standard contained in this section requires more than the reasonable efforts standard that applies in cases not involving the Indian Child Welfare Act. *In re Interest of Shayla H. et al.*, 22 Neb. App. 1, 846 N.W.2d 668 (2014).

If an Indian child's tribe was not given proper notice of proceedings resulting in termination of parental rights to the child, the termination proceedings conducted were invalid and the order of termination must be vacated. *In re Interest of Nery V. et al.*, 20 Neb. App. 798, 832 N.W.2d 909 (2013).

ANNOTATIONS

43-1506.

The provisions relating to the withdrawal of a relinquishment provided for in this section of the Nebraska Indian Child Welfare Act do not apply to a relinquishment signed prior to the applicability of the act. *In re Interest of Nery V. et al.*, 20 Neb. App. 798, 832 N.W.2d 909 (2013).

43-1508.

Good cause for deviation from the statutory placement preferences was not shown where the record showed that the Department of Health and Human Services was unsuccessful in locating relative placements for the children but did not detail what efforts had been made, the record did not show why the children had not been placed with intervenor grandmother, the grandmother made no argument that such placement should occur and did not assert that the children's nonrelative placements were not in their best interests, and the record did not show if the children's placements met any of the other statutory claims of preference. *In re Interest of Enrique P. et al.*, 19 Neb. App. 778, 813 N.W.2d 513 (2012).

43-1802.

At the commencement of the case, grandparents had standing to seek visitation; however, the case became moot when, during the pendency of the proceedings, the statutory requirements for grandparent visitation ceased to exist. *Muzzey v. Ragone*, 20 Neb. App. 669, 831 N.W.2d 38 (2013).

Pursuant to subsection (2) of this section, a grandparent seeking visitation over the objection of a natural parent must satisfy the statutory burden of proof to establish the existence of a significant beneficial relationship with the child and that it will be in the best interests of the child to continue the relationship; the notion that a relationship with biological grandparents is axiomatically in the best interests of a child is not sufficient. *Vrtatko v. Gibson*, 19 Neb. App. 83, 800 N.W.2d 676 (2011).

43-2923.

Although there was no evidence that the mother was currently engaged in abusive behaviors or an abusive relationship, the trial court acted within its discretion in finding that the father's custody was in the best interests of the child based on the mother's history of domestic violence, previous removal of a child, and the mother's questionable rehabilitation. *State on behalf of Keegan M. v. Joshua M.*, 20 Neb. App. 411, 824 N.W.2d 383 (2012).

43-2924.

The Parenting Act applied because the action was filed after January 1, 2008, and because parenting functions for a child were at issue. *Citta v. Facka*, 19 Neb. App. 736, 812 N.W.2d 917 (2012).

43-2929.

Although the trial court's order did not attach a parenting plan and did not address several determinations under subdivision (1)(b) of this section, such error did not deprive the appellate court of jurisdiction where the order addressed custody, telephone visitation, and alternating weekend and holiday visitation. *Citta v. Facka*, 19 Neb. App. 736, 812 N.W.2d 917 (2012).

43-2932.

Regardless of when the parent was convicted of third degree domestic assault, where the district court was presented with evidence of that conviction during modification proceedings, it was required to comply with this section in making a custody determination. *Flores v. Flores-Guerrero*, 290 Neb. 248, 859 N.W.2d 578 (2015).

Threatening to cause or actually causing bodily injury to a spouse or former spouse qualifies as domestic intimate partner abuse. *Flores v. Flores-Guerrero*, 290 Neb. 248, 859 N.W.2d 578 (2015).

Where a preponderance, or the greater weight, of the evidence demonstrates that a parent has committed one of the listed actions, the obligations of this section are mandatory. *Flores v. Flores-Guerrero*, 290 Neb. 248, 859 N.W.2d 578 (2015).

The requirement to make special written findings that the child and the "other parent" can be adequately protected from harm if child custody is awarded to the parent with a record of domestic abuse applies to instances where domestic abuse occurred between the parents of the child or children at issue, where it is necessary to ensure that

ANNOTATIONS

there is no future domestic abuse to the "other parent." This section does not apply to a case in which one parent's conviction for domestic abuse was the result of an incident with a prior or estranged domestic intimate partner, who is not a party in the current action. *State on behalf of Dawn M. v. Jerrod M.*, 22 Neb. App. 835, 861 N.W.2d 755 (2015).

43-2933.

Pursuant to subsection (2) of this section, no person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 (first degree sexual assault) and the child was conceived as a result of that violation. *In re Interest of Danajah G. et al.*, 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section applies to cases under the Nebraska Juvenile Code when parenting functions are at issue under chapter 42 of the Nebraska Revised Statutes. *In re Interest of Danajah G. et al.*, 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section does not provide for any exception to or discretion in its mandatory language. *In re Interest of Danajah G. et al.*, 23 Neb. App. 244, 870 N.W.2d 432 (2015).

Subsection (2) of this section falls under the Parenting Act, section 43-2920 et seq., and not under the Nebraska Juvenile Code, section 43-245 et seq. *In re Interest of Danajah G. et al.*, 23 Neb. App. 244, 870 N.W.2d 432 (2015).

A person seeking a change in custody based upon "material" changes in circumstances cannot piggyback such alleged material changes on the statutorily deemed change in circumstances provided by this section. *Hopkins v. Hopkins*, 23 Neb. App. 174, 869 N.W.2d 390 (2015).

If an attempt to change custody is not successful pursuant to this section, then as to any other grounds for modification alleged, the party seeking the modification in custody bears the burden of showing a material change of circumstances affecting the best interests of the child. *Hopkins v. Hopkins*, 23 Neb. App. 174, 869 N.W.2d 390 (2015).

44-358.

Maintaining proof of an insured's qualification to perform a covered activity is the type of condition subsequent that this section was intended to address. *Devese v. Transguard Ins. Co.*, 281 Neb. 733, 798 N.W.2d 614 (2011).

The contribute-to-the-loss standard in this section applies to breaches of preloss conditions subsequent and continuing warranties that function as conditions subsequent. Regardless of an insurer's labeling, a clause in an insurance policy that requires an insured to avoid an increased hazard is a preloss condition subsequent for coverage. *D & S Realty v. Markel Ins. Co.*, 280 Neb. 567, 789 N.W.2d 1 (2010).

This section was intended to limit an insurer's ability to avoid liability for breach of increased hazard conditions which are so broad that an insured's violation of them is not causally relevant to the loss. *D & S Realty v. Markel Ins. Co.*, 280 Neb. 567, 789 N.W.2d 1 (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).

44-2810.

Hospital policies and rules do not conclusively determine the standard of care owed. *Green v. Box Butte General Hosp.*, 284 Neb. 243, 818 N.W.2d 589 (2012).

44-2828.

The Nebraska Hospital-Medical Liability Act provides for the filing of medical malpractice claims against health care providers within 2 years from the date of the negligent treatment. *Jacobson v. Shresta*, 21 Neb. App. 102, 838 N.W.2d 19 (2013).

The Nebraska Hospital-Medical Liability Act provides a 2-year statute of limitations for medical malpractice claims unless the cause of action could not have been reasonably discovered within the 2 years, and then the action

ANNOTATIONS

may be brought within 1 year from the date of discovery. *Hampton v. Shaw*, 14 Neb. App. 499, 710 N.W.2d 341 (2006).

44-4821.

The liquidator did not seek to enforce the arbitration agreements in question but disavowed them according to the express powers granted under subsection (1)(m) of this section. *State ex rel. Wagner v. Kay*, 15 Neb. App. 85, 722 N.W.2d 348 (2006).

44-6407.

A "regular use" exclusion in an automobile insurance policy, which mirrors the statutory exclusion, reflects the public policy of this state and is not void as against public policy. *Alsidez v. American Family Mut. Ins. Co.*, 282 Neb. 890, 807 N.W.2d 184 (2011).

44-6411.

Stacking of uninsured motorist coverages is prohibited, and an insured's maximum recovery of uninsured motorist benefits is limited to the highest limit of any one applicable policy. *Weston v. Continental Western Ins. Co.*, 14 Neb. App. 956, 720 N.W.2d 904 (2006).

44-7532.

The language in this section referring to notice to "all interested parties" contemplates notice by the Nebraska Department of Insurance to both the insured and the insurer regarding the adversarial proceeding to come. It would not be a sensible reading of the statutes to require notice to only one of the parties, where both parties are active in the proceeding but seek different outcomes. *Travelers Indem. Co. v. Gridiron Mgmt. Group*, 281 Neb. 113, 794 N.W.2d 143 (2011).

45-103.

Judgment interest accrues on the judgment, even if that judgment is made up in part of interest already accrued. *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260 (2012).

Interest under this section shall accrue on decrees and judgments for the payment of money from the date of entry of judgment until satisfaction of judgment. *Valley Cty. Sch. Dist. 88-0005 v. Ericson State Bank*, 18 Neb. App. 624, 790 N.W.2d 462 (2010).

45-103.01.

Judgment interest accrues on the judgment, even if that judgment is made up in part of interest already accrued. *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260 (2012).

The court did not err in awarding postjudgment interest on the wife's fixed dollar amount share of her husband's profit-sharing plan from the date of entry of the decree, even though the qualified domestic relations order called for by the decree was not entered for over 2 years. *Fry v. Fry*, 18 Neb. App. 75, 775 N.W.2d 438 (2009).

45-103.02.

Under subsection (1) of this section, where the claim is unliquidated and the plaintiff's offer of settlement is exceeded by the judgment, prejudgment interest accrues on the full amount of the judgment starting on the date of the plaintiff's first offer of settlement, which offer is exceeded by the judgment. *Martensen v. Rejda Bros.*, 283 Neb. 279, 808 N.W.2d 855 (2012).

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).

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).

ANNOTATIONS

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).

45-103.04.

Subsection (2) of this section prohibits prejudgment interest for (1) any action involving the state, (2) any action involving a political subdivision of the state, or (3) any action involving an employee of the state or political subdivision for any negligent or wrongful act or omission accruing within the scope of such employee's office or employment. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

45-104.

As used in this section, "money received to the use of another" indicates that the money is received on behalf of another person, such as an agent receiving money on behalf of his principal. *Brook Valley Ltd. Part. v. Mutual of Omaha Bank*, 285 Neb. 157, 825 N.W.2d 779 (2013).

Generally, prejudgment interest accrues on the unpaid balance of liquidated claims arising from an instrument in writing from the date the cause of action arose until the entry of judgment. *Valley Cty. Sch. Dist. 88-0005 v. Ericson State Bank*, 18 Neb. App. 624, 790 N.W.2d 462 (2010).

This section provides the interest rate for prejudgment interest upon the happening of events outlined in this section. *Valley Cty. Sch. Dist. 88-0005 v. Ericson State Bank*, 18 Neb. App. 624, 790 N.W.2d 462 (2010).

45-104.01.

Under the former law, if an obligation to pay interest arises under section 67-405 and the rate is not specified, the rate is that specified in this section. *Robertson v. Jacobs Cattle Co.*, 285 Neb. 859, 830 N.W.2d 191 (2013).

45-1,112.

The broad language in the definition of credit agreements precludes recovery for a credit agreement based on the promissory estoppel doctrine, which is wholly dependent on reliance on a promise or assurance. *Synergy4 Enters. v. Pinnacle Bank*, 290 Neb. 241, 859 N.W.2d 552 (2015).

45-1,113.

The credit agreement statute of frauds is not coextensive with the general statute of frauds with all the common-law exceptions. *Synergy4 Enters. v. Pinnacle Bank*, 290 Neb. 241, 859 N.W.2d 552 (2015).

This section supersedes the common-law theory of promissory estoppel insofar as it applies to unwritten credit agreements or oral promises to loan money or extend credit. *Synergy4 Enters. v. Pinnacle Bank*, 290 Neb. 241, 859 N.W.2d 552 (2015).

46-120.

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline maintenance and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to the landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. *DeLaet v. Blue Creek Irr. Dist.*, 23 Neb. App. 106, 868 N.W.2d 483 (2015).

46-122.

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline maintenance and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to the landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time

ANNOTATIONS

the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. *DeLaet v. Blue Creek Irr. Dist.*, 23 Neb. App. 106, 868 N.W.2d 483 (2015).

46-229.04.

In a determination of whether an appropriation should be canceled for nonuse, once it is established that the appropriation has not been used for more than 5 consecutive years, it is the burden of the interested party to present evidence that there was sufficient cause for nonuse. In re Appropriation A-7603, 291 Neb. 678, 868 N.W.2d 314 (2015).

46-263.

This section does not apply to persons who neglect or refuse to deliver water to those who have no right to the water. *Weber v. North Loup River Pub. Power*, 288 Neb. 959, 854 N.W.2d 263 (2014).

46-713.

As an exception to the requirement that a litigant assert its own rights and interests to have standing, a natural resources district has standing under this section to challenge a state action that requires it to spend the public funds that it is charged with raising and controlling. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Because the director of the Department of Natural Resources cannot resolve a challenge to a senior appropriator's call before the Department of Natural Resources issues its annual report on January 1, the department cannot base its annual evaluations upon a senior appropriator's call. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Generally, to be an "interested person" under subsection (2) of this section, a litigant challenging a fully appropriated determination by the Department of Natural Resources must be asserting its own rights and interests, not those of a third party, and must demonstrate an injury in fact sufficient to confer common-law standing. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Subsection (3)(a) of this section permits the Department of Natural Resources to designate a river basin or subpart as fully appropriated by focusing solely on whether surface water appropriations are sustainable. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' promulgated methodologies under this section for determining whether a river basin or subpart is fully appropriated must be followed and applied in a consistent manner. Additionally, under subsection (1)(d) of this section, an independent party must be able to replicate and assess its methodologies and conclusions. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations do not permit an independent party to replicate or assess the department's findings or methodologies, as required under subsection (1)(d) of this section. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations promulgated under this section do not permit the department to determine that a river basin is fully appropriated by comparing a senior appropriation right to the streamflow values at a specific diversion point or streamflow gauge. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

To petition for a contested hearing challenging a fully appropriated determination of the Department of Natural Resources for a river basin, the challenger must have standing as an interested person under subsection (2) of this section. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

47-502.

This section is applicable to time spent in the county jail awaiting sentencing. *State v. Zamarron*, 19 Neb. App. 349, 806 N.W.2d 128 (2011).

47-503.

This section and section 83-1,106(1) use similar language, so the reasoning of cases involving one of these provisions is applicable to cases involving the other. *State v. Wills*, 285 Neb. 260, 826 N.W.2d 581 (2013).

ANNOTATIONS

This section provides that a defendant is entitled to "[c]redit against" his jail term. In context, that means that a judge cannot credit a defendant with more time served than the length of his or her sentence. *State v. Wills*, 285 Neb. 260, 826 N.W.2d 581 (2013).

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).

Under subsection (1) of this section, a defendant is not entitled to credit against a jail sentence for time spent in a residential substance abuse treatment facility. *State v. Anderson*, 18 Neb. App. 329, 779 N.W.2d 623 (2010).

Pursuant to subsection (2) of this section, the court had the authority to revise the sentence when the defendant was inadvertently given 361 days' credit for time served rather than the 61 days actually served. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

Pursuant to subsection (2) of this section, the giving of credit for time served is part of the sentence. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

Pursuant to subsection (2) of this section, where a portion of a sentence is valid and a portion is invalid or erroneous, the court has the authority to modify or revise the sentence by removing the invalid or erroneous portion of the sentence if the remaining portion of the sentence constitutes a complete valid sentence. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

48-101.

Absent an amendment to the Nebraska Workers' Compensation Act, an appellate court will not judicially create a "substantially certain" exception from the act's intended exclusive jurisdiction over workplace injuries, so as to allow an employer to be sued in tort if the employer knew its tortious conduct was substantially certain to result in an employee's injury. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

By barring an employee's estate from bringing a tort action against the employer for the employee's accidental death in the workplace, the Nebraska Workers' Compensation Act did not violate the estate's Seventh Amendment right to a jury trial. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

Delay, cost, and uncertainty are contrary to the underlying purposes of the Nebraska Workers' Compensation Act; the act was intended by the Legislature to simplify legal proceedings and to bring about a speedy settlement of disputes between the injured employee and the employer by taking the place of expensive court actions with tedious delays and technicalities. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The distinction made by the Nebraska Workers' Compensation Act between employees who are intentional tort victims and nonemployees who are intentional tort victims, barring only employees who are injured by intentional torts of their employers from bringing a tort action, does not violate the equal protection, due process, or special legislation provisions of the U.S. and Nebraska Constitutions; the act was not designed to govern the rights of nonemployees, and thus employees and nonemployees are not similarly situated, the Legislature made a rational distinction between the two groups, and workers' compensation law reflected policy choice that employers bear the costs of employees' work-related injuries. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The Nebraska Workers' Compensation Act's different standards of exclusivity for employees versus employers, providing compensation under the act for employees injured by an employer's willful negligence but not providing compensation under the act for employees injured by their own willful negligence, does not violate the equal protection, due process, or special legislation provisions of the U.S. and Nebraska Constitutions; employers and employees stand in different relations to the common undertaking and are not similarly situated, it was rational for the Legislature to recognize this fact when determining employers' and employees' rights and liabilities under the act, and it was not arbitrary for the Legislature to determine coverage under the act based on whose willful negligence caused the injury. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

ANNOTATIONS

The primary object of the Nebraska Workers' Compensation Act is to do away with the inadequacies and defects of the common-law remedies; to destroy the common-law defenses; and, in the employments affected, to give compensation, regardless of the fault of the employer. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

A common-law misrepresentation defense to govern when an applicant's misrepresentation will bar recovery of workers' compensation benefits is incompatible with the Nebraska Workers' Compensation Act, overruling *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979). *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

In cases governed by the Nebraska Workers' Compensation Act, the "in the course of" requirement has been defined as testing the work connection as to the time, place, and activity; the injury must be shown to have arisen within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to the employment. *Brittain v. H & H Chevrolet*, 21 Neb. App. 986, 845 N.W.2d 619 (2014).

The definition of "accident," as used in this section, includes injuries resulting from activities which create a series of repeated traumas ultimately producing disability. *Hadfield v. Nebraska Med. Ctr.*, 21 Neb. App. 20, 838 N.W.2d 310 (2013).

An employee's deliberate or intentional defiance of a reasonable rule will disqualify that employee from receiving benefits if (1) the employer has a reasonable rule designed to protect the health and safety of the employee, (2) the employee has actual notice of the rule, (3) the employee has an understanding of the danger involved in the violation of the rule, (4) the rule is kept alive by bona fide enforcement by the employer, and (5) the employee does not have a bona fide excuse for the rule violation. These factors need not be met when an employee has accidentally violated a safety rule. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

An employee's violation of an employer's safety rule must be intentional in order for that employee to be held willfully negligent under this section. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

48-102.

A common-law misrepresentation defense to govern when an applicant's misrepresentation will bar recovery of workers' compensation benefits is incompatible with the Nebraska Workers' Compensation Act, overruling *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979). *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

The statutory defense under this section applies to employees, not applicants. *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

48-106.

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Pursuant to subdivision (2) of section 48-114, employers subject to the Nebraska Workers' Compensation Act include every person, firm, or corporation who is engaged in any trade, occupation, business, or profession as described in this section, and who has any person in service under any contract of hire, express or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subdivision (2) of section 48-115, under the Nebraska Workers' Compensation Act, an "employee" or "worker" is defined as every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in this section under any contract of hire, expressed or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subsection (1) of this section, the Nebraska Workers' Compensation Act applies to every employer in this state, including nonresident employers performing work in this state, employing one or more employees, in the regular trade, business, profession, or vocation of such employer. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

48-111.

Where a surviving husband's deceased wife's employer was immune under section 48-148 from the surviving husband's suit against it for bystander negligent infliction of emotional distress, a fellow employee of the deceased wife was also immune from the surviving husband's suit because under this section, the employer's immunity

ANNOTATIONS

extended to the deceased wife's fellow employee. *Pittman v. Western Engineering Co.*, 283 Neb. 913, 813 N.W.2d 487 (2012).

48-114.

Pursuant to subdivision (2) of this section, employers subject to the Nebraska Workers' Compensation Act include every person, firm, or corporation who is engaged in any trade, occupation, business, or profession as described in section 48-106, and who has any person in service under any contract of hire, express or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

48-115.

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Pursuant to subsection (2) of this section, illegal aliens are included in the definition of employees or workers. *Visoso v. Cargill Meat Solutions*, 18 Neb. App. 202, 778 N.W.2d 504 (2009).

The record contained sufficient evidence to support the trial judge's conclusion that the worker was self-employed and that the worker did not comply with subsection (10) of this section. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

Pursuant to subdivision (2) of this section, the terms "employee" and "worker" do not include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subdivision (2) of this section, under the Nebraska Workers' Compensation Act, an "employee" or "worker" is defined as every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

48-118.

An employer's right to a future credit against an employee's recovery in an action related to a workers' compensation claim does not depend upon who brought the action which led to the employee's recovery or who happens to "recover" first. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The beneficent purposes of the Nebraska Workers' Compensation Act do not require narrow interpretation of an employer's statutory subrogation rights; the act's beneficent purposes are to provide an injured worker with prompt relief from the adverse economic effects caused by a work-related injury or occupational disease, and concern the employee's ability to promptly obtain workers' compensation benefits, not the employee's ability to additionally retain recovery against negligent third parties in tort actions. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The policies behind the Nebraska Workers' Compensation Act favor a liberal construction in favor of the employer's statutory right to subrogate against culpable third parties; workers' compensation acts generally seek to balance the rights of injured workers against the costs to the businesses that provide employment, and in order to reach this balance, most acts liberally allow employers to shift liability onto third parties whenever possible. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The workers' compensation subrogation statute was not intended to draw a distinction which would grant the right to a future credit in recovery from actions brought by the employer, but deny that right in actions brought by the employee; such a distinction would be arbitrary insofar as it would depend on who first brought suit, and insofar as the timing of the suit would change the amount of recovery. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

There is a strong presumption that a parent company is not the employer of its subsidiary's employees. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

"Third person" under the Nebraska Workers' Compensation Act includes any person other than the employer or those whom the Nebraska Workers' Compensation Act makes an employer. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

ANNOTATIONS

"Third person" under the Nebraska Workers' Compensation Act is an entity with which there is no employer-employee relationship. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

48-118.02.

When an employer has a subrogation interest in the recovery in a worker's third-party claim, the party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney fees. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

48-118.04.

Statutory subrogation under this section requires a fair and equitable distribution to be determined by the trial court under the facts of each case. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

Third-party settlements are void unless agreed to in writing by the employee, or the employee's personal representative, and the employer, or the employer's insurer. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

This section does not require an injured worker to be "made whole" before a subrogated compensation carrier is entitled to a portion of the settlement. *Sterner v. American Fam. Ins. Co.*, 19 Neb. App. 339, 805 N.W.2d 696 (2011).

48-120.

Because this section makes the employer liable for reasonable medical and hospital services, the employer must also pay the cost of travel incident to and reasonably necessary for obtaining these services. *Armstrong v. State*, 290 Neb. 205, 859 N.W.2d 541 (2015).

Where there was sufficient evidence to support a factual finding that knee surgery was not required by the prior work-related injury, the Workers' Compensation Court did not err in denying compensation for the surgery under an award of future medical treatment. *Pearson v. Archer-Daniels-Midland Milling Co.*, 285 Neb. 568, 828 N.W.2d 154 (2013).

The term "payor" as used in subsection (8) of this section is limited to third-party payors, such as health insurance carriers. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

Upon receipt of payment from an employer, a supplier or provider of services becomes obligated to reimburse an employee any amounts he or she has previously paid. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

An employer is not responsible for medical services furnished or ordered by any physician or other person selected by an injured employee in disregard of subdivision (2)(a) of this section. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

If an employer has sufficient knowledge of an injury to an employee to be aware that medical treatment is necessary, it has the affirmative and continuing duty to supply medical treatment that is prompt, in compliance with the statutory prescription on choice of doctors, and adequate; if the employer fails to do so, the employee may make suitable independent arrangements at the employer's expense. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

If compensability is denied by the employer, the employee has the right to select a physician and the employer is liable for medical services subsequently found to be compensable. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

Under subdivision (2)(a) of this section, an 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 the injury. The employer shall notify the employee following an injury of such right of selection in a form and manner within the timeframe established by the compensation court. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

Once it has been determined that the need for future medical care is probable, the employer is liable for any future care shown to be reasonably necessary under this section. *Sellers v. Reefer Systems*, 283 Neb. 760, 811 N.W.2d 293 (2012).

ANNOTATIONS

Under subsection (b) of this section, the fee schedule is applicable to payments made by third-party payors. *Pearson v. Archer-Daniels-Midland Milling Co.*, 282 Neb. 400, 803 N.W.2d 489 (2011).

An employee's injury which occurs en route to a required medical appointment that is related to a compensable injury is also compensable, as long as the chosen route is reasonable and practical. *Straub v. City of Scottsbluff*, 280 Neb. 163, 784 N.W.2d 886 (2010).

Under subsection (1)(a) of this section, an employer is liable for all reasonable medical, surgical, and hospital services 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. *Yost v. Davita, Inc.*, 23 Neb. App. 482, 873 N.W.2d 435 (2015).

Before an order for future medical benefits may be entered pursuant to subsection (1)(a) of this section, there must be explicit evidence that future medical treatment is reasonably necessary to relieve the injured worker from the effects of the work-related injury. *Adams v. Cargill Meat Solutions*, 17 Neb. App. 708, 774 N.W.2d 761 (2009).

The trial judge did not err in ordering the employer to pay for medication, because the judge's determination that the medication was necessary to treat both the work-related side effects of pain medication and the unrelated condition of sleep apnea was not clearly wrong. *Zitterkopf v. Aulick Indus.*, 16 Neb. App. 829, 753 N.W.2d 370 (2008).

The meaning of subsection (4) of this section is plain and unambiguous. When an injured worker is seeking compensation for an injury from his employer and the employer seeks relevant information from the injured worker's treating physician regarding that injury, that information is not privileged. *Scott v. Drivers Mgmt., Inc.*, 14 Neb. App. 630, 714 N.W.2d 23 (2006).

Medical expenses incurred before the date of an employee's accident in a repetitive trauma case may be compensable if they are reasonably necessary and related to the compensable injury. *Tomlin v. Densberger Drywall*, 14 Neb. App. 288, 706 N.W.2d 595 (2005).

48-121.

A worker is not, as a matter of law, totally disabled under this section solely because the worker's disability prevents him or her from working full time. *Armstrong v. State*, 290 Neb. 205, 859 N.W.2d 541 (2015).

Disability as a basis for compensation under subdivision (3) of this section is determined by the loss of use of a body member, not loss of earning power. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The extent of disability to a scheduled member under subdivision (3) of this section can be expressed in terms of percent. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The third paragraph of subdivision (3) of this section does not require expert proof of permanent physical restrictions assigned to each injured member in order to perform the loss of earning capacity assessment thereunder. *Rodgers v. Nebraska State Fair*, 288 Neb. 92, 846 N.W.2d 195 (2014).

The amendment by 2007 Neb. Laws, L.B. 588, to subdivision (3) of this section, which permits an employee to recover benefits for loss of earning capacity from a loss or loss of use of more than one member resulting in at least a 30-percent loss of earning capacity, was substantive, rather than procedural, and, therefore, did not apply retroactively to a claimant injured in an accident before the effective date of the amendment. *Smith v. Mark Chrisman Trucking*, 285 Neb. 826, 829 N.W.2d 717 (2013).

A return to work at wages equal to those received before the injury may be considered, but it does not preclude a finding that the workers' compensation claimant is either partially or totally disabled. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

A workers' compensation claimant who leaves a job with an employer responsible for an injury in order to pursue more desirable employment does not waive temporary total disability benefits simply because the employer responsible for the injury would have accommodated light-duty restrictions during postsurgical recovery periods necessitated by the injury. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

Earning capacity determinations, for workers' compensation purposes, should not be distorted by factors such as business booms, sympathy of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his crippling handicaps. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

ANNOTATIONS

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Whether a claimant's scheduled member loss has caused a whole body impairment is properly resolved under a proximate cause inquiry at the point of the claimant's maximum medical improvement, when the claimant's permanent impairment is assessed. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

If, by the point of maximum medical improvement, a claimant has developed a whole body impairment in addition to a scheduled member injury, the question is whether the work-related injury proximately caused the whole body impairment. If both injuries arose from the same work-related injury, because the scheduled member injury resulted in the whole body impairment in a natural and continuous sequence of events and the whole body impairment would not have occurred but for the work-related injury, then the claimant is entitled to disability benefits for the whole body impairment. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Whether a claimant's compensable scheduled member injury has resulted in a whole body impairment and loss of earning power is a question of fact. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

A vocational rehabilitation plan seeking to place a part-time hourly employee who suffered a permanent impairment in employment where the employee would earn wages similar to those based upon a calculation of average weekly wage under subdivision (4) of this section would best achieve the goal of restoring the employee to suitable employment. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

In calculating the average weekly wage, a part-time hourly employee with a permanent disability is treated as though he or she had worked a 40-hour workweek. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

A workers' compensation claimant may receive permanent or temporary workers' compensation benefits for either partial or total disability. *Yost v. Davita, Inc.*, 23 Neb. App. 482, 873 N.W.2d 435 (2015).

The 300-week limitation found in subsection (2) of this section does not apply to benefits for temporary total disability awarded under subsection (1) of this section. *Heppler v. Omaha Cable*, 16 Neb. App. 267, 743 N.W.2d 383 (2007).

Pursuant to subdivision (2) of this section, where a trial court is not called upon to make a determination of loss of earning power until after completion of vocational rehabilitation, the court is not required to retroactively look to the extent of loss of earning power as of the date of maximum medical improvement and disregard the documented change in loss of earning power flowing from completion of vocational rehabilitation. *Grandt v. Douglas County*, 14 Neb. App. 219, 705 N.W.2d 600 (2005).

48-125.

A reasonable controversy between an employer and an employee as to the payment of workers' compensation benefits can be shown by evidence adduced at trial but unknown at the time benefits were denied. *Armstrong v. State*, 290 Neb. 205, 859 N.W.2d 541 (2015).

By filing a release pursuant to section 48-139(3), a worker waives his or her right to ask for penalties and attorney fees under this section. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The waiting-time penalty and attorney fees for waiting-time proceedings provided under this section are rights under the Nebraska Workers' Compensation Act. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

Interest may be assessed only when attorney fees are allowed. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

No waiting-time penalty is required for an employer's delinquent payment of medical expenses, because such expenses do not constitute compensation within the meaning of this section. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

The prohibition against assessing attorney fees against medical providers set forth in the last sentence of subdivision (2)(a) of this section cannot be avoided by instead filing an action in the district court seeking fees under the common fund doctrine. *Valentine, O'Toole v. Midwest Neurosurgery*, 285 Neb. 80, 825 N.W.2d 425 (2013).

ANNOTATIONS

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).

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).

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).

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).

Subsection (1) of this section requiring that payments be sent directly to the person entitled to compensation within 30 days of the award and imposing waiting-time penalties if the statute is violated is applicable to orders approving lump-sum settlements. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

When a workers' compensation settlement check is sent from an insurance carrier to the employer's counsel, but not to the claimant or his or her counsel, within 30 days after the entry of the award, it is not sent directly to the claimant within the statutorily prescribed time, as would warrant the imposition of waiting-time penalties. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

Workers' compensation payment sent directly to the claimant's counsel within 30 days after the entry of the award is in compliance with the section requiring that payments be sent directly to the person entitled to compensation within 30 days of the award and imposing waiting-time penalties if the statute is violated. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

Workers' compensation statute requiring that payments be sent directly to the person entitled to compensation within 30 days of the award does not include any requirement that there be actual prejudice suffered by the claimant before waiting-time penalties are appropriate. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

A reasonable controversy under this section may exist (1) if there is a question of law previously unanswered by the appellate courts, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the Nebraska Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

An award of attorney fees is a prerequisite before interest on the compensation amount due to a claimant may be awarded under this section. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

This section authorizes a 50-percent penalty payment for waiting time involving delinquent payment of compensation and an attorney fee, where there is no reasonable controversy regarding an employee's claim for workers' compensation benefits. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

Where there is no reasonable controversy, this section authorizes the award of attorney fees. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

Whether a reasonable controversy exists under this section is a question of fact. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

A 50-percent waiting-time penalty cannot be awarded on the basis of an award of delinquent medical payments; a waiting-time penalty is available only on awards of delinquent payments of disability or indemnity benefits. *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

ANNOTATIONS

When an attorney fee is allowed pursuant to this section, interest shall be assessed on the final award of weekly compensation benefits, not "medical payments." *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

A reasonable controversy under this section may exist (1) if there is a question of law previously unanswered by the appellate courts, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the Nebraska Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

The purpose of the 30-day waiting-time penalty and the provision for attorney fees, as provided in this section, is to encourage prompt payment by making delay costly if the award has been finally established. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

This section authorizes a 50-percent penalty payment for waiting time involving delinquent payment of compensation and an attorney fee, where there is no reasonable controversy regarding an employee's claim for workers' compensation. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

48-126.

When an employee paid by the hour suffers a work-related injury that results in permanent injury or death, the employee's average weekly wage is calculated by multiplying the rate of wages by a 40-hour workweek rather than by averaging that employee's actual wages over the 6 months before the accident. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

The language "ordinarily constituting his or her week's work" precludes an automatic mathematical calculation based on the past 6 months' work; the goal of any average income test is to produce an honest approximation of the claimant's probable future earning capacity. *Mueller v. Lincoln Public Schools*, 282 Neb. 25, 803 N.W.2d 408 (2011).

In this section, the Legislature dealt with the possible inequity that could result from abnormally high work weeks in the context of average weekly wage calculations. *Arbtin v. Puritan Mfg. Co.*, 13 Neb. App. 540, 696 N.W.2d 905 (2005).

48-128.

In order for the employer to qualify under subsection (1)(b) of this section, the employer must establish by written records that the employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired such knowledge. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The purpose of the written records requirement of this section is to put in place a strictly limited method of proving a predicate fact before liability for benefits may be shifted to the Workers' Compensation Trust Fund. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The purpose of this section is to provide employers with an incentive to hire those who suffer from permanent disability, but the statute restricts the benefits to those employers who consciously hire those they know to be suffering from prior permanent disabilities. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The written records requirement of this section is merely evidentiary, and must be sensibly construed so as not to defeat the statute's larger remedial purpose. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

This section does not require possession of the written records by the employer at the time of the subsequent injury or at the time the claim for contribution from the Workers' Compensation Trust Fund is made. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

ANNOTATIONS

48-130.

No provision in the Nebraska Workers' Compensation Act limits an employee's ability to receive workers' compensation benefits because he or she is simultaneously receiving unemployment benefits. *Hernandez v. JBS USA*, 20 Neb. App. 634, 828 N.W.2d 765 (2013).

48-133.

When the parties do not dispute the facts concerning reporting and notice, whether such facts constitute sufficient notice to the employer under this section presents a question of law. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009); *Unger v. Olsen's Ag. Lab.*, 19 Neb. App. 459, 809 N.W.2d 813 (2012).

Where the underlying facts are undisputed, or if disputed, the factual finding of the trial court was not clearly erroneous, the question of whether this section bars the claim is a question of law upon which the appellate court must make a determination independent of that of the trial court. *Unger v. Olsen's Ag. Lab.*, 19 Neb. App. 459, 809 N.W.2d 813 (2012).

For purposes of notice or knowledge under this section, the employer equates to the insurer, and vice versa. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

Knowledge of an employee's injury gained by the employee's foreman, supervisor, or superintendent in a representative capacity for an employer is knowledge imputed to the employer and notice to an employer sufficient for the notice requirement of this section. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

This section provides an exception to the written notice rule if it can be shown that the employer had notice or knowledge of the injury sufficient to lead a reasonable person to conclude that an employee's injury is potentially compensable, which in turn would create a responsibility of the employer to investigate the matter. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

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).

48-137.

An employee seeking application of the exception for a material change in condition and substantial increase in disability is not required to demonstrate that he or she could not have filed a petition earlier than he or she did. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The exception for a material change in condition and substantial increase in disability was not rendered unenforceable by *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011). *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The Legislature has acquiesced to the exception for a material change in condition and substantial increase in disability. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

If an employee suffers an injury which appears to be slight but which is progressive in its course, and which several physicians are unable to correctly diagnose, the worker's failure to file a claim or bring suit in time will not defeat his right to recovery, if he gave notice and commenced the action within the statutory period after he learned that a compensable disability resulted from the original accident. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

In the case of a latent injury, the time for commencement of the action is 1 year after the employee obtained knowledge that the accident caused the compensable disability. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

The mere fact that the employee does not know the full extent of his injury from a medical standpoint does not make it latent so as to toll the running of the limitations period, particularly where medical facts were reasonably discoverable, and the burden of proving the injury to have been latent and progressive is upon the employee. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

ANNOTATIONS

The 2-year limitations period in this section will not begin to run until it becomes, or should have become, reasonably apparent to the claimant that a compensable disability was present. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

There are two exceptions to the statute of limitations: (1) where a latent and progressive injury is not discovered within 2 years of the accident which caused the injury and (2) where a material change in condition occurs which necessitates additional medical care and from which an employee suffers increased disability. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

2-year limitations period in this section is tolled when a claimant suffers a latent and progressive injury. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

Where an injury is latent and progressive, the period of limitations begins to run when the true nature thereof is first discovered by the claimant. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

48-139.

By filing a release pursuant to the settlement procedures in subsection (3) of this section, a worker waives all rights under the Nebraska Workers' Compensation Act, including both the right to penalties and attorney fees under section 48-125 and the right to ask a judge of the compensation court to decide the parties' rights and obligations. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The filing of a release pursuant to subsection (3) of this section does not deprive the Workers' Compensation Court of jurisdiction to hear further issues in a case. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The filing of a release pursuant to subsection (3) of this section, not actual payment of the lump-sum settlement, effects a discharge from liability for the employer. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

There is no ambiguity in the statutorily required language for a release pursuant to subsection (3) of this section. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

Sections 48-140 and 48-141 and this section emphasize the finality of a lump-sum settlement and only contemplate "readjustment" if the "settlement" itself is procured by fraud; the statutes do not speak to readjusting underlying "awards" allegedly procured by fraud. *Hunt v. Pick's Pack-Hauler*, 23 Neb. App. 278, 869 N.W.2d 723 (2015).

In order to achieve a modification of a lump-sum payment that has been approved by court order pursuant to this section on the ground of increased or decreased incapacity, a party must make an application on the ground of increase or decrease of incapacity due solely to the injury. *Hubbart v. Hormel Foods Corp.*, 15 Neb. App. 129, 723 N.W.2d 350 (2006).

48-140.

Sections 48-139 and 48-141 and this section emphasize the finality of a lump-sum settlement and only contemplate "readjustment" if the "settlement" itself is procured by fraud; the statutes do not speak to readjusting underlying "awards" allegedly procured by fraud. *Hunt v. Pick's Pack-Hauler*, 23 Neb. App. 278, 869 N.W.2d 723 (2015).

48-141.

To establish a change in incapacity under this section, an applicant must show a change in impairment and a change in disability. In a workers' compensation context, impairment refers to a medical assessment, whereas disability relates to employability. *Rader v. Speer Auto*, 287 Neb. 116, 841 N.W.2d 383 (2013).

The party seeking modification has the burden to prove the allegations in its petition to modify the running award of temporary total disability benefits. *Visoso v. Cargill Meat Solutions*, 285 Neb. 272, 826 N.W.2d 845 (2013).

Sections 48-139 and 48-140 and this section emphasize the finality of a lump-sum settlement and only contemplate "readjustment" if the "settlement" itself is procured by fraud; the statutes do not speak to readjusting underlying "awards" allegedly procured by fraud. *Hunt v. Pick's Pack-Hauler*, 23 Neb. App. 278, 869 N.W.2d 723 (2015).

ANNOTATIONS

A court may modify a workers' compensation award based on a change in incapacity due to a mental condition arising out of a work-related physical injury if the change is due solely to the work-related injury. *Jurgens v. Irwin Indus. Tool Co.*, 20 Neb. App. 488, 825 N.W.2d 820 (2013).

An employee seeking temporary total disability benefits must file a petition for modification as soon as she becomes totally disabled. *Jurgens v. Irwin Indus. Tool Co.*, 20 Neb. App. 488, 825 N.W.2d 820 (2013).

Where the original award of benefits did not award vocational rehabilitation services, the applicant needed to comply with the requirements of this section and allege and prove that he had suffered an increase in incapacity since the entry of the original award in order to obtain the requested vocational rehabilitation services. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

In order to achieve a modification of a lump-sum payment that has been approved by court order pursuant to section 48-139 on the ground of increased or decreased incapacity, a party must make an application on the ground of increase or decrease of incapacity due solely to the injury. *Hubbart v. Hormel Foods Corp.*, 15 Neb. App. 129, 723 N.W.2d 350 (2006).

In the context of body as a whole injuries, an applicant for modification who must fulfill the requirements set forth in this section by demonstrating a change in incapacity must establish both a change in the employee's physical condition, or impairment, and a change in the employee's disability. *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

48-146.

The requirement contained in this section that each workers' compensation insurance policy covers all employees within the purview of the Nebraska Workers' Compensation Act overrides an insurance policy provision which excludes any such employee from coverage. *Kruid v. Farm Bureau Mut. Ins. Co.*, 17 Neb. App. 687, 770 N.W.2d 652 (2009).

Notice to the insured-employer is binding on the insurer. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

48-148.

Under this section, a surviving husband's claim for bystander negligent infliction of emotional distress against his deceased wife's employer was barred by the employer immunity provisions of the Nebraska Workers' Compensation Act because he accepted compensation from the employer as his deceased wife's dependent, he settled with and released the employer, and his claim arose from his deceased wife's injury as the phrase "arise from such injury" is used in this section. *Pittman v. Western Engineering Co.*, 283 Neb. 913, 813 N.W.2d 487 (2012).

48-151.

An employee's death from asphyxiation, after entering a grain bin at his workplace in violation of safety regulations and then becoming engulfed in grain, was the result of an "accident" covered by the exclusive jurisdiction of the Nebraska Workers' Compensation Act, even though the employer willfully violated the Occupational Safety and Health Administration regulations. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

A "deliberate act" as referenced in subdivision (7) of this section refers to an employee's deliberate injury of himself or herself. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

Pursuant to subdivision (7) of this section, an employee's violation of an employer's safety rule must be intentional in order for that employee to be held willfully negligent. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

48-161.

Ancillary jurisdiction does not include the power to enforce an award. *Burnham v. Pacesetter Corp.*, 280 Neb. 707, 789 N.W.2d 913 (2010).

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).

ANNOTATIONS

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).

Although the Workers' Compensation Court has jurisdiction to decide ancillary matters to a workers' compensation claim, an award of attorney fees for the creation of a common fund is not within such ancillary jurisdiction when the entity from which such fees are sought is not a party to the case. *Heesch v. Swimtastic Swim School*, 20 Neb. App. 260, 823 N.W.2d 211 (2012).

Even though this section vests the Nebraska Workers' Compensation Court with jurisdiction to decide issues ancillary to an employee's right to workers' compensation benefits, such jurisdiction is not exclusive and a district court has jurisdiction to hear a declaratory judgment action regarding a workers' compensation insurance policy coverage dispute. *Kruid v. Farm Bureau Mut. Ins. Co.*, 17 Neb. App. 687, 770 N.W.2d 652 (2009).

Although, as a statutorily created court, the Workers' Compensation Court is a tribunal of limited and special jurisdiction and has only such authority as has been conferred on it by statute, under this section, the compensation court has jurisdiction to decide any issue ancillary to the resolution of an employee's right to workers' compensation benefits. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

48-162.01.

A vocational rehabilitation plan seeking to place a part-time hourly employee who suffered a permanent impairment in employment where the employee would earn wages similar to those based upon a calculation of average weekly wage under section 48-121(4) would best achieve the goal of restoring the employee to suitable employment. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

Subsection (7) of this section cannot be used solely to punish or coerce an injured worker. There must be evidence to support a finding that the worker's disability would have been reduced had the worker cooperated with medical treatment or vocational rehabilitation. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

Subsection (7) of this section is intended to permit the compensation court to modify rehabilitation plans in response to changed circumstances following the entry of the initial plan. It does not apply to situations in which a worker has refused to cooperate with treatment or rehabilitation. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

Subsection (7) of this section is intended to prevent an employee's refusal to improve his or her medical condition or earning capacity from causing an employer to pay more workers' compensation benefits than it should. It only authorizes the complete termination of a claimant's right to benefits under the Nebraska Workers' Compensation Act if evidence is presented to support a finding that had the employee availed himself or herself of the benefits offered, the employee would no longer be disabled. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

The plain language of the last sentence of subsection (7) of this section contemplates a modification of services previously granted and does not provide for a modification of a final order to grant entirely new services or benefits. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

Pursuant to subsection (3) of this section, when a vocational rehabilitation counselor submits multiple reports that are determined to be written not because a process of recovery was incomplete from the time a prior report was written, but, rather, because a counselor gives differing opinions each based on a different factual scenario, it is up to the trial court to make factual findings to determine which report should be given the rebuttable presumption of correctness. *Ladd v. Complete Concrete*, 13 Neb. App. 200, 690 N.W.2d 416 (2004).

48-162.03.

The compensation court may rule upon any motion addressed to the court by any party to a suit or proceeding, including, but not limited to, motions for summary judgment or other motions for judgment on the pleadings but not including motions for new trial. *Yost v. Davita, Inc.*, 23 Neb. App. 482, 873 N.W.2d 435 (2015).

48-177.

This section is not jurisdictional; it simply specifies the venue for hearing the cause. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

ANNOTATIONS

48-180.

The 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 14 days after the date of such findings, order, award, or judgment. *Yost v. Davita, Inc.*, 23 Neb. App. 482, 873 N.W.2d 435 (2015).

48-185.

Sufficient evidence supported the Workers' Compensation Court's finding that a workers' compensation claimant's mental illness arose out of a compensable workplace injury sustained during an assault by a patient at the hospital where claimant worked as a nurse and the aggravation of that injury in two further workplace assaults. The claimant was consistently employed for over 15 years before the first assault without significant or relevant physical or mental incident, during which time she worked, was married, and had a family, and the claimant required extensive treatment after the three assaults, including electroconvulsive therapy. *Hynes v. Good Samaritan Hosp.*, 291 Neb. 757, 869 N.W.2d 78 (2015).

Where there was sufficient evidence to support a factual finding that knee surgery was not required by the prior work-related injury, a three-judge panel of the Workers' Compensation Court did not have grounds under this section to reverse the decision of a single judge of the Workers' Compensation Court denying compensability for the surgery. *Pearson v. Archer-Daniels-Midland Milling Co.*, 285 Neb. 568, 828 N.W.2d 154 (2013).

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (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 no 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. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

An appellate court may not substitute its view of the facts for that of the Workers' Compensation Court if the record contains sufficient evidence to substantiate the factual conclusions reached by the Workers' Compensation Court. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

Under this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (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. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

This section precludes an appellate court's substitution of its view of the facts for that of the Workers' Compensation Court if the record contains sufficient evidence to substantiate the factual conclusions reached by the Workers' Compensation Court. *Godsey v. Casey's General Stores*, 15 Neb. App. 854, 738 N.W.2d 863 (2007).

Pursuant to this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (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. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

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).

ANNOTATIONS

48-1,112.

The hearing on a motion to enforce an award of compensation is the hearing on the merits referenced in this section. The hearing prior to the entry of the award is not the hearing on the merits referenced in this section. *DeLeon v. Reinke Mfg. Co.*, 287 Neb. 419, 843 N.W.2d 601 (2014).

48-604.

Services performed in the position of county attorney are excepted from the definition of employment, and thus, wages earned in that capacity are not for covered "employment" for purposes of unemployment insurance benefits. *Lang v. Howard County*, 287 Neb. 66, 840 N.W.2d 876 (2013).

The position of county attorney is one that has been designated "a major nontenured policymaking or advisory position" under or pursuant to Nebraska law. *Lang v. Howard County*, 287 Neb. 66, 840 N.W.2d 876 (2013).

48-627.

For purposes of section 48-628(7), a student is not "registered for full attendance" and therefore disqualified from receiving unemployment benefits if the student's educational program allows him or her to remain "available for work" pursuant to subdivision (3) of this section. *Lecuona v. Cramer*, 14 Neb. App. 770, 714 N.W.2d 786 (2006).

48-628.

An employee's actions do not rise to the level of misconduct if the individual is merely unable to perform the duties of the job. *Meyers v. Nebraska State Penitentiary*, 280 Neb. 958, 791 N.W.2d 607 (2010).

Under subsection (2) of this section, an individual shall be disqualified for unemployment benefits for misconduct related to his work. *Meyers v. Nebraska State Penitentiary*, 280 Neb. 958, 791 N.W.2d 607 (2010).

The degree of damage caused should not be a determining factor in whether an employee engaged in misconduct under subsection (2) of this section. Instead, the focus should be on the employee's culpability as demonstrated by his or her conduct and intentions. *NEBCO, Inc. v. Murphy*, 280 Neb. 145, 784 N.W.2d 447 (2010).

Pursuant to subsection (5)(b) of this section, receipt of workers' compensation temporary disability benefits disqualifies a person from receiving unemployment benefits unless the amount of workers' compensation benefits is less than the amount recoverable for unemployment. In that situation, the individual is entitled to the difference. *Hernandez v. JBS USA*, 20 Neb. App. 634, 828 N.W.2d 765 (2013).

For purposes of subdivision (7) of this section, a student is not "registered for full attendance" and therefore disqualified from receiving unemployment benefits if the student's educational program allows him or her to remain "available for work" pursuant to section 48-627(3). *Lecuona v. Cramer*, 14 Neb. App. 770, 714 N.W.2d 786 (2006).

48-810.01.

A contract continuation clause is not a contract for a future contract year in violation of this section. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

48-816.

Good faith bargaining includes the execution of a written contract incorporating the terms of an agreement reached pursuant to subsection (1) of this section. *Scottsbluff Police Off. Assn. v. City of Scottsbluff*, 282 Neb. 676, 805 N.W.2d 320 (2011).

Health insurance coverage and related benefits are mandatory subjects of bargaining under the Industrial Relations Act. *Scottsbluff Police Off. Assn. v. City of Scottsbluff*, 282 Neb. 676, 805 N.W.2d 320 (2011).

Status quo orders issued by the Commission of Industrial Relations pursuant to subsection (1) of this section are limited to the pendency of the industrial dispute between the parties and are binding on the parties only until the dispute has been resolved. *Professional Firefighters Assn. v. City of Omaha*, 282 Neb. 200, 803 N.W.2d 17 (2011).

Deputy assessor, deputy clerk, and deputy treasurer are considered statutory supervisors due to authority granted to those positions by state law. *IBEW Local Union No. 1597 v. Sack*, 280 Neb. 858, 793 N.W.2d 147 (2010).

ANNOTATIONS

48-818.

A contract continuation clause deals with hours, wages, or terms and conditions of employment as set forth in this section and thus is mandatorily bargainable. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

48-824.

Pursuant to subsection (1), a public employer is required to negotiate in good faith regarding a new vacation accrual policy, because such a policy relates to a mandatory subject of bargaining. *Service Empl. Internat. v. Douglas Cty. Sch. Dist.*, 286 Neb. 755, 839 N.W.2d 290 (2013).

Where the organization representing public employees received notice of the public employer's intent to change the vacation accrual policy, the organization's failure to make a timely request to bargain over the changes constituted a waiver of the right to bargain over what would otherwise have been a mandatory subject of bargaining. *Service Empl. Internat. v. Douglas Cty. Sch. Dist.*, 286 Neb. 755, 839 N.W.2d 290 (2013).

An employer may lawfully implement changes in terms and conditions of employment which are mandatory topics of bargaining only when three conditions have been met: (1) The parties have bargained to impasse, (2) the terms and conditions implemented were contained in a final offer, and (3) the implementation occurred before a petition regarding the year in dispute is filed with the Commission of Industrial Relations. *IBEW Local 763 v. Omaha Pub. Power Dist.*, 280 Neb. 889, 791 N.W.2d 310 (2010).

The purpose of this section is to provide public sector employees with the protection from unfair labor practices that private sector employees enjoy under the National Labor Relations Act, by making refusals to negotiate in good faith regarding mandatory bargaining topics a prohibited practice. *IBEW Local 763 v. Omaha Pub. Power Dist.*, 280 Neb. 889, 791 N.W.2d 310 (2010).

48-1102.

The threshold fact of consequence in a disability discrimination action is whether the plaintiff is a qualified individual with a disability—i.e., one who can perform the essential functions of the job with or without reasonable accommodations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

A qualified individual with a disability includes an individual who has been rehabilitated successfully or who is erroneously regarded as engaging in the illegal use of drugs. *Marshall v. EyeCare Specialties*, 291 Neb. 264, 865 N.W.2d 343 (2015).

48-1104.

It is unlawful for an employer to discriminate against an individual because of a perceived disability. *Marshall v. EyeCare Specialties*, 291 Neb. 264, 865 N.W.2d 343 (2015).

48-1107.01.

Apart from an exception for summary judgments, in a discrimination action brought under the Nebraska Fair Employment Practice Act, a court evaluates the evidence under the three-part burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Under that framework, (1) the plaintiff has the burden of proving a prima facie case of discrimination; (2) if the plaintiff proves a prima facie case, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the adverse employment action; and (3) if the employer articulates a nondiscriminatory reason for its action, the employee maintains the burden of proving that the stated reason was pretextual. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

The threshold fact of consequence in a disability discrimination action is whether the plaintiff is a qualified individual with a disability—i.e., one who can perform the essential functions of the job with or without reasonable accommodations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

48-1107.02.

A covered employer's failure to make reasonable accommodations for a qualified individual's known physical or mental limitations is discrimination, unless the employer demonstrates that accommodating the individual's limitations would impose an undue hardship on business operations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

ANNOTATIONS

Former subdivision (9)(c) of this section applies to entrance medical examinations of applicants who have been offered employment, whereas former subsection (10) applies to medical examinations of employees. The latter is prohibited unless the employer shows that the examination is job-related and consistent with business necessity. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Psychological counseling is usually a medical examination under former subsection (10) of this section. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

The court erred in excluding the testimony of an employee's expert that was relevant to establishing the employee's permanent disability, the employer's knowledge of his disability, and whether he had previously performed his job with accommodations that the employer had considered reasonable. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

The threshold fact of consequence in a disability discrimination action is whether the plaintiff is a qualified individual with a disability—i.e., one who can perform the essential functions of the job with or without reasonable accommodations. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Under former subsection (10) of this section, an employer's doubts about an employee's ability to perform the essential functions of a job may be created by an employee's request for accommodations, frequent absences, or request for leave because of his or her medical condition. Such doubts can also be raised by the employer's knowledge of an employee's behavior that poses a direct threat to the employee or others. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Under former subsection (10) of this section, to show a business necessity for requiring an employee to submit to a medical examination, an employer has the burden to show that (1) the business necessity is vital to the business; (2) it has a legitimate, nondiscriminatory reason to doubt the employee's ability to perform the essential functions of his or her duties; and (3) the examination is no broader than necessary. There must be significant evidence that could cause a reasonable person to inquire as to whether an employee is still capable of performing his job. An employee's behavior cannot be merely annoying or inefficient to justify an examination; rather, there must be genuine reason to doubt whether that employee can perform job-related functions. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

Under former subsection (10) of this section, whether an employer requires similarly situated employees to submit to a medical examination is relevant to whether the employer considers such examinations a business necessity. But any comparison between employees must be made with an eye to the ultimate inquiry, i.e., the necessity of the examination of the plaintiff employee. An employer's disparate treatment of employees regarding medical examinations cannot override substantial evidence that the employer had good reason to doubt the employee's ability to perform the essential functions of the job. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

48-1114.

A violation of the provision of the Nebraska Fair Employment Practice Act prohibiting employers from discriminating against an employee who has opposed any practice or refused to carry out any action unlawful under federal or state law must include either the employee's opposition to an unlawful practice of the employer or the employee's refusal to honor an employer's demand that the employee do an unlawful act. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The evil addressed by provision of the Nebraska Fair Employment Practice Act prohibiting employers from discriminating against an employee who has opposed any practice or refused to carry out any action unlawful under federal law or the laws of the state is the exploitation of the employer's power over the employee when used to coerce the employee to endorse, through participation or acquiescence, the unlawful acts of the employer. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The Nebraska Fair Employment Practice Act makes it unlawful for an employer to discriminate against its employee on the basis of the employee's opposition to an unlawful practice. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The provision of the Nebraska Fair Employment Practice Act prohibiting employers from discriminating against an employee who has opposed any practice or refused to carry out any action unlawful under federal or state law and reasonable policy dictate that an employee's opposition to any unlawful act of the employer, whether or not the employer pressures the employee to actively join in the illegal activity, is protected under the act. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

ANNOTATIONS

The public safety auditor for the city did not oppose an unlawful employment practice or refuse to honor the city's demand that she do an unlawful act by publishing her report critical of the police department's practices regarding traffic stops of minorities, as required to support her retaliation claim under the Nebraska Fair Employment Practice Act against the city following her termination; the auditor's claim was based on her contention that she was fired for opposing unlawful practices of the city, but the unlawful practices that the auditor opposed were the alleged discriminatory tactics by some police officers against minority members of the public, rather than unlawful practices of the city. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

The term "practice," as used in the Nebraska Fair Employment Practice Act provision making it unlawful for an employer to discriminate against an employee because he has opposed any practice unlawful under federal or state law, refers to an unlawful practice of the employer, not unlawful or prohibited actions of coemployees. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

An individual who has opposed discriminatory employment practices is protected by this section of the Nebraska Fair Employment Practice Act, making it unlawful for an employer to discriminate against an employee because he or she has opposed any practice unlawful under federal law or the laws of Nebraska. *Helvering v. Union Pacific RR. Co.*, 13 Neb. App. 818, 703 N.W.2d 134 (2005).

48-1228.

The Nebraska Wage Payment and Collection Act does not prohibit employers from discharging employees, and it does not provide employees with any substantive rights. *Coffey v. Planet Group*, 287 Neb. 834, 845 N.W.2d 255 (2014).

48-1229.

An appellate court will consider a payment a wage subject to the Nebraska Wage Payment and Collection Act if (1) it is compensation for labor or services, (2) it was previously agreed to, and (3) all the conditions stipulated have been met. *Timberlake v. Douglas County*, 291 Neb. 387, 865 N.W.2d 788 (2015).

The list of fringe benefits under the former subsection (3) of this section is not exclusive. Under the former subsection (4), "injured on duty" agreed-upon benefits for employees who are injured while performing a high-risk duty are wages that an employee can earn just by rendering the specified services. *Timberlake v. Douglas County*, 291 Neb. 387, 865 N.W.2d 788 (2015).

Under the 2007 amendments to this section, unused "paid time off" hours constitute unused vacation leave when the only stipulated condition for earning the hours is the rendering of services and an employee has an absolute right to take this time off for any purpose that he or she wishes. In that circumstance, an employee's unused paid time off hours are wages that an employer must pay upon separation of employment. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

A payment will be considered a wage subject to the Nebraska Wage Payment and Collection Act if (1) it is compensation for labor or services, (2) it was previously agreed to, and (3) all the conditions stipulated have been met. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

Payments pursuant to a severance agreement that were not earned and did not accrue through continued employment are not compensation for labor or services rendered, and therefore, the employee is not entitled to attorney fees. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

Subdivision (4) of this section provides that the term "wages" includes orders on file with the employer at the time of termination of employment. Thus, an employment agreement policy which clearly conflicts with such definition of wages, even though said policy is common within the industry, is void because it is prohibited by the Nebraska Wage Payment and Collection Act. *Sanford v. Clear Channel Broadcasting*, 14 Neb. App. 908, 719 N.W.2d 312 (2006).

48-1231.

A court has discretion to award attorney fees higher than the statutory minimum required under this section, and an award of fees above the statutory minimum does not depend upon the presence of employer's unreasonable defenses or vexatious counterclaims. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

An appellate court reviews a lower court's award of attorney fees under this section for an abuse of discretion. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

ANNOTATIONS

49-1201.

This section relates to tax matters and is inapplicable in postconviction actions. *State v. Smith*, 286 Neb. 77, 834 N.W.2d 799 (2013).

49-14,101.02.

In order to determine whether there has been a violation of subsection (2) of this section, a court must consider the intent behind the expenditure of public resources. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

Public resources are used "for the purpose of campaigning" when their use is intended to influence public support for or against a particular political candidate, ticket, or measure. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

The language of subsection (2) of this section does not make a distinction between express advocacy and issue advocacy. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

49-14,131.

Advisory opinions of the Nebraska Accountability and Disclosure Commission are not the equivalent of either of the matters appealable to the district court in accordance with the Administrative Procedure Act identified in this section, to wit, contested cases or declaratory rulings, and therefore are not appealable under this section. *Engler v. State*, 283 Neb. 985, 814 N.W.2d 387 (2012).

52-157.

To act with bad faith, one must know his or her lien is invalid or overstated or act with reckless disregard as to such facts. *Chicago Lumber Co. of Omaha v. Selvera*, 282 Neb. 12, 809 N.W.2d 469 (2011).

While this section states that damages awarded may include reasonable attorney fees, it does not mandate the award of such fees. *Model Interiors v. 2566 Leavenworth, LLC*, 19 Neb. App. 56, 809 N.W.2d 775 (2011).

53-132.

The limit to two times the license fee pertains only to taxes on the occupation of selling alcohol and has no bearing on occupation taxes designed to target activities other than selling alcoholic beverages. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

54-1,107.

A brand on livestock is only prima facie evidence of ownership which may be rebutted. *Heritage Bank v. Kasson*, 22 Neb. App. 401, 853 N.W.2d 868 (2014).

54-601.

The various dictionary definitions of "chase," as applied to this section imposing liability on dog owners for damages caused by their dogs chasing any person, i.e., "to follow quickly or persistently in order to catch or harm," "to make run away; drive," or "to go in pursuit," are disjunctive. *Grammer v. Lucking*, 292 Neb. 475, 873 N.W.2d 387 (2016).

In addition to an owner's liability under this section and common-law liability for known vicious propensities, the keeper of a dog can be liable to injured third parties on a negligence theory. *Van Kleek v. Farmers Ins. Exch.*, 289 Neb. 730, 857 N.W.2d 297 (2014).

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).

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).

ANNOTATIONS

54-2417.

By enacting legislation that made it unlawful to operate an animal feeding operation without having an approved livestock waste control facility, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

54-2420.

Because this section indicates that the Legislature did not intend to occupy the entire field of livestock waste management regulation and that the state requirements in the Livestock Waste Management Act were meant to coexist with local requirements, there is no field preemption of local laws by the Livestock Waste Management Act. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

54-2432.

By enacting legislation that made it unlawful to discharge livestock waste without obtaining the appropriate permits or an exemption, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

By enacting legislation that made it unlawful to operate an animal feeding operation without having an approved livestock waste control facility, the Legislature acknowledged that livestock waste is a potentially harmful substance that must be handled properly. *Butler County Dairy v. Butler County*, 285 Neb. 408, 827 N.W.2d 267 (2013).

57-229.

In order for owners of severed mineral interests to publicly exercise their rights of ownership, they must strictly comply with the statutory requirements of this section prior to the date an action is filed by the surface owner. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

Reference to an unrecorded deed that may or may not exist does not establish the proper chain of ownership necessary to comply with the requirements for filing a verified claim. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

Severed mineral owners must strictly comply with the statutory requirements of this section. *Rice v. Bixler*, 289 Neb. 194, 854 N.W.2d 565 (2014).

The "record owner" of mineral interests, as used in this section, includes an individual identified by probate records in the county where the interests are located. *Gibbs Cattle Co. v. Bixler*, 285 Neb. 952, 831 N.W.2d 696 (2013).

The transfer of ownership occurred years after the enactment of the dormant mineral statutes and prevented the abandonment of the severed mineral interests for at least 23 years into the future. The appellants had the full 23-year period specified in this section to publicly exercise their right of ownership so as to prevent abandonment of the mineral interests. *Peterson v. Sanders*, 282 Neb. 711, 806 N.W.2d 566 (2011).

Nebraska's dormant mineral statutes expressly require the record owner of a severed mineral interest to publicly exercise the right of ownership by performing one of the actions specified in this section during the statutory dormancy period. *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010).

The plain language of this section provides that a severed mineral interest is abandoned unless the record owner of the interest is the one who publicly exercises it. *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010).

57-1503.

Absent a supermajority concurrence, the Nebraska Supreme Court could not invalidate a statute giving the Governor authority to approve an interstate oil pipeline carrier's proposed route through the State and bestow upon the carrier the power to exercise eminent domain, despite the majority's conclusion that the legislation is facially unconstitutional because it transfers the Public Service Commission's constitutional powers over common carriers to the Governor. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

Under the citizen taxpayer exception for matters of "great public concern," an exception to the injury-in-fact standing requirement, landowners had standing to challenge the constitutionality of legislation giving the Governor the authority to approve a major oil pipeline route and thereby bestow upon the carrier the power to exercise eminent domain. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).

ANNOTATIONS

59-805.

In order for a plaintiff to successfully bring a claim that a defendant drove it out of business under this section, the plaintiff must show that the defendant is a person, corporation, joint-stock company, limited liability company, or other association which is engaged in business within Nebraska and that the defendant gave any direction or authority to do any act with the intent and for the purpose of driving the plaintiff out of business. *Credit Bureau Servs. v. Experian Info. Solutions*, 285 Neb. 526, 828 N.W.2d 147 (2013).

60-399.

A license plate hanging downward is not "fastened in an upright position" as required by subsection (1) of this section. *State v. Hyland*, 17 Neb. App. 539, 769 N.W.2d 781 (2009).

Where the front license plate was placed in the front window of the defendant's vehicle, displayed so that a law enforcement officer was unable to ascertain the numbers or see the plate clearly, a traffic violation occurred, giving the officer probable cause to stop the defendant's vehicle. *State v. Richardson*, 17 Neb. App. 388, 763 N.W.2d 420 (2008).

60-3,100.

Where the front license plate was placed in the front window of the defendant's vehicle, displayed so that a law enforcement officer was unable to ascertain the numbers or see the plate clearly, a traffic violation occurred, giving the officer probable cause to stop the defendant's vehicle. *State v. Richardson*, 17 Neb. App. 388, 763 N.W.2d 420 (2008).

60-498.01.

A sworn report does not need to state or support an inference that the individual arrested drove or controlled a motor vehicle on property open to public access. *Hoppens v. Nebraska Dept. of Motor Vehicles*, 288 Neb. 857, 852 N.W.2d 331 (2014).

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).

Pursuant to subsection (6)(a) of this section, the arresting officer may participate in the hearing and any prehearing conference by telephone, television, or other electronic means at the discretion of the director. *Penry v. Neth*, 20 Neb. App. 276, 823 N.W.2d 243 (2012).

When the motorist made no showing in support of the need for a continuance and refused to request one himself, it was not a violation of his due process rights for the Department of Motor Vehicles hearing officer not to grant a continuance on her own motion so that the motorist could obtain a stay of revocation under subdivision (6)(b) of this section. *Kriz v. Neth*, 19 Neb. App. 819, 811 N.W.2d 739 (2012).

This section requires the director to conduct the administrative license revocation hearing, but allows the director to appoint a hearing officer to preside at the hearing, and thus, the hearing officer serves as the director's agent. *Hashman v. Neth*, 18 Neb. App. 951, 797 N.W.2d 275 (2011).

For purposes of subsection (5)(a) of this section, the test results are "received" on the date they are delivered to the law enforcement agency by which the arrest was effectuated and the arresting peace officer has 10 days thereafter to forward the sworn report to the director of the Department of Motor Vehicles. *Freeman v. Neth*, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

In an administrative license revocation proceeding, pursuant to subsection (3) of this section, the sworn report of the arresting officer must, at a minimum, contain the information specified in this subsection in order to confer jurisdiction. *Freeman v. Neth*, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

ANNOTATIONS

The 10-day time period for submitting a sworn report under subsection (5)(a) of this section is mandatory, and if the sworn report is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. *Freeman v. Neth*, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in section 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) 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. *Teeters v. Neth*, 18 Neb. App. 585, 790 N.W.2d 213 (2010).

Where a sworn report identifies two arresting officers and, as submitted, conveys the information required by the applicable statute, the omission of the second arresting officer's signature of the report is a technical deficiency that does not deprive the Department of Motor Vehicles of jurisdiction. *Law v. Nebraska Dept. of Motor Vehicles*, 18 Neb. App. 237, 777 N.W.2d 586 (2010).

Despite the officer's failure to check the box next to "Submitted to a blood test," the information contained under this heading clearly shows that a blood test was performed and that the results of the blood test were in a concentration above the statutory amount, which conveys the information required by subsection (3) of this section. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

Nebraska law grants the director of the Department of Motor Vehicles jurisdiction to administratively revoke the license of a person found to be driving while under the influence of alcohol. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

Subsection (3) of this section requires a sworn report to state that the person was arrested as described in section 60-6,197(2), the reasons for such arrest, that the person was requested to submit to the required test, and that the person submitted to a test, the type of test to which he submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The sworn report of the arresting officer must, at a minimum, contain the information specified in the applicable statute in order to confer jurisdiction. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The test used to determine whether an omission from a sworn report becomes a jurisdictional defect, as opposed to a technical one, is whether, notwithstanding the omission, the sworn report conveys the information required by the applicable statute. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

If a sworn report falling under subsection (5)(a) of this section is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. *Murray v. Neth*, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

The 10-day time limit set forth in subsection (3) of this section is directory rather than mandatory. *Murray v. Neth*, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

The 10-day time limit set forth in subsection (2) of this section, which states that an arresting officer shall forward a sworn report to the director of the Department of Motor Vehicles, is directory rather than mandatory. *Walz v. Neth*, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

Under subsection (5)(a) of this section, the 10-day time period for submitting a sworn report is mandatory, and if the sworn report is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. *Stoetzel v. Neth*, 16 Neb. App. 348, 744 N.W.2d 465 (2008).

The last sentence of subsection (5)(a) of this section modifies only the preceding sentence and does not apply to the other subsections. *Thomsen v. Nebraska Dept. of Motor Vehicles*, 16 Neb. App. 44, 741 N.W.2d 682 (2007).

The 10-day time limit set forth in subsection (3) of this section is directory rather than mandatory. *Thomsen v. Nebraska Dept. of Motor Vehicles*, 16 Neb. App. 44, 741 N.W.2d 682 (2007).

The 10-day time limit set forth in subsection (2) of this section is directory rather than mandatory. *Forgey v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 191, 724 N.W.2d 828 (2006).

Pursuant to subsection (2) of this section, the failure of the notary to include the expiration date of his or her commission on the sworn report does not render such sworn report invalid because the presence of a notarial seal and the notary's signature serves as presumptive evidence of the performance of the notary's duty. *Valeriano-Cruz v. Neth*, 14 Neb. App. 855, 716 N.W.2d 765 (2006).

ANNOTATIONS

Once the arresting officer's sworn report is received, the case for 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. *Scott v. State*, 13 Neb. App. 867, 703 N.W.2d 266 (2005).

60-498.02.

This section, providing that drivers whose operator's licenses had been revoked for a period of 1 year were eligible for an employment driving permit, and section 60-4,129, providing that drivers whose operator's licenses had been revoked for a period of 90 days were eligible for an employment driving permit after a period of 30 days, are not in conflict or ambiguous. *Bazar v. Department of Motor Vehicles*, 17 Neb. App. 910, 774 N.W.2d 433 (2009).

60-498.04.

Pursuant to Nebraska's administrative revocation statutes, decisions of the director of the Department of Motor Vehicles are appealed pursuant to the Administrative Procedure Act. *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

60-4,108.

Under this section, a conviction under subsection (2) may not be used to enhance a conviction under subsection (1) to a second, third, or subsequent offense. *State v. Mendoza-Bautista*, 291 Neb. 876, 869 N.W.2d 339 (2015).

Application of this section is not limited to the operation of a motor vehicle on a public highway. *State v. Frederick*, 291 Neb. 243, 864 N.W.2d 681 (2015).

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).

60-4,129.

Section 60-498.02, providing that drivers whose operator's licenses had been revoked for a period of 1 year were eligible for an employment driving permit, and this section, providing that drivers whose operator's licenses had been revoked for a period of 90 days were eligible for an employment driving permit after a period of 30 days, are not in conflict or ambiguous. *Bazar v. Department of Motor Vehicles*, 17 Neb. App. 910, 774 N.W.2d 433 (2009).

60-4,168.

Convictions or adjudications in other states for driving under the influence of drugs or alcohol apply to this section. *Klug v. Nebraska Dept. of Motor Vehicles*, 291 Neb. 235, 864 N.W.2d 676 (2015).

60-649.

A residential driveway is not private property that is open to public access. Thus, criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-662.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-670.

A "Road Closed" sign is a traffic control device. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

60-682.

A motorist commits a traffic infraction by driving on a road marked with a road closed barricade and sign, thus giving an officer probable cause to stop the vehicle. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

ANNOTATIONS

60-696.

Pursuant to subsection (2) of this section, a driver is not criminally liable for leaving the scene of a property damage accident when he does not know that an accident has happened, an injury has been inflicted, or a death has occurred; lack of such knowledge constitutes a proper defense. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Pursuant to subsection (2) of this section, knowledge that an accident has occurred may be proved by circumstantial evidence in prosecution for leaving the scene of a damage accident; the fact finder may consider all of the facts and circumstances which are indicative of knowledge. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Pursuant to subsection (2) of this section, the question of lack of knowledge that an accident has happened, an injury has been inflicted, or a death has occurred in prosecution for leaving the scene of a property damage accident is one of fact, not law. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

Subsections (1) and (2) of this section create separate offenses, not one single offense that can be committed in multiple ways. As such, where a defendant is charged with violation of one subsection, a conviction cannot be sustained absent proof of the statutory requirements of that specific subsection. *State v. Harper*, 19 Neb. App. 93, 800 N.W.2d 683 (2011).

60-6,108.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,115.

Even if a motorist fell within the exception of the statute, an officer's stop of the vehicle for driving on a road which was clearly marked as being closed would be objectively reasonable because the officer would have probable cause to believe that a traffic violation has occurred. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

The exception of this section did not apply to a motorist traveling a road closed only due to weather and road conditions and where neither the motorist nor his passengers lived along the closed road, had reason to travel the road in the normal course of operations, or lacked another route of travel to their destination. *State v. Morrissey*, 19 Neb. App. 590, 810 N.W.2d 195 (2012).

60-6,120.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

60-6,121.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

The Nebraska Legislature intended political subdivisions to have discretion in the installation of traffic control devices, for purposes of a claim under the Political Subdivisions Tort Claims Act. *Dresser v. Thayer Cty*, 18 Neb. App. 99, 774 N.W.2d 640 (2009).

60-6,139.

By including the language "as nearly as practicable," subdivision (1) of this section expressly requires that surrounding circumstances be considered. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

The language "as nearly as practicable" conveys that subdivision (1) of this section does not require absolute adherence to a feasibility requirement, but, rather, something less rigorous. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

ANNOTATIONS

The mere touching or crossing of a lane divider line, without more, does not constitute a traffic violation under this section. *State v. Au*, 285 Neb. 797, 829 N.W.2d 695 (2013).

60-6,142.

Any crossing of the fog line onto the shoulder constitutes driving on the shoulder and is a violation of this section. *State v. Magallanes*, 284 Neb. 871, 824 N.W.2d 696 (2012).

60-6,196.

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of this section or section 60-6,197, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

Criminal liability under this section does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

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).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in section 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) 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 this section. *Teeters v. Neth*, 18 Neb. App. 585, 790 N.W.2d 213 (2010); *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The elements of driving while under the influence which the State must prove beyond a reasonable doubt are (1) that the defendant was operating or in actual physical control of a motor vehicle and (2) that he did so while under the influence of alcoholic liquor. *State v. Martin*, 18 Neb. App. 338, 782 N.W.2d 37 (2010).

A prior conviction resulting in a sentence of probation, and not actual imprisonment, can be used for enhancement in subsequent proceedings without a showing that the defendant had or waived counsel in the prior proceeding. *State v. Wilson*, 17 Neb. App. 846, 771 N.W.2d 228 (2009).

The revocation of an operator's license pursuant to subsection (2)(c) of this section as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with subsection (2)(c) of this section. *State v. Flores*, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

60-6,197.

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of section 60-6,196 or this section, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

A court may not rely solely on the existence of an implied consent statute to conclude that consent to a blood test was given for Fourth Amendment purposes, and the determination of whether consent was voluntarily given requires a court to consider the totality of the circumstances. *State v. Modlin*, 291 Neb. 660, 867 N.W.2d 609 (2015).

The validity of a charge for refusing to submit to a chemical test under subsection (3) of this section depends upon the State's showing a valid arrest under subsection (2). If the arrest was invalid because the police officers lacked

ANNOTATIONS

probable cause, a conviction for refusing to submit to a chemical test is invalid. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in subsection (2) of this section—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) 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. *Teeters v. Neth*, 18 Neb. App. 585, 790 N.W.2d 213 (2010); *Wilson v. Neth*, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

For purposes of an administrative license revocation, including a statement in the sworn report that the individual was arrested pursuant to this section does not provide a factual basis for the arrest, because such is a mere legal conclusion. *Yenney v. Nebraska Dept. of Motor Vehicles*, 15 Neb. App. 446, 729 N.W.2d 95 (2007).

60-6,197.02.

"Conviction" means a finding of guilt by a jury or a judge, or a judge's acceptance of a plea of guilty or no contest. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

For the purpose of sentence enhancement, a suspended imposition of a sentence from Missouri qualified as a "prior conviction" where the Missouri judgment indicated that the defendant pled guilty to driving while intoxicated in a Missouri court and the judge accepted the plea. *State v. Gilliam*, 292 Neb. 770, 874 N.W.2d 48 (2016).

The plain and ordinary meaning of this section does not require the State to prove the exact date of the prior offense. *State v. Taylor*, 286 Neb. 966, 840 N.W.2d 526 (2013).

A defendant's conviction in Colorado for driving while ability impaired could not be used to enhance his conviction in Nebraska for driving under the influence. *State v. Mitchell*, 285 Neb. 88, 825 N.W.2d 429 (2013).

"Prior conviction" for purposes of enhancing a conviction for driving under the influence is defined in terms of other laws regarding driving under the influence, while a "prior conviction" for purposes of enhancing a conviction for refusing a chemical test is defined in terms of refusal laws. There is no crossover between driving under the influence and refusal convictions for purposes of sentence enhancement. *State v. Huff*, 282 Neb. 78, 802 N.W.2d 77 (2011).

It was not the Legislature's intent to prohibit the consideration of prior out-of-state driving under the influence convictions simply because differing elements of the offense or differing quantum of proof make it merely *possible* that the defendant's behavior would not have resulted in a violation of section 60-6,196, had it occurred in Nebraska. *State v. Garcia*, 281 Neb. 1, 792 N.W.2d 882 (2011).

The prosecution presents prima facie evidence of a prior driving under the influence conviction by presenting a certified copy of the conviction and evidence that it was counseled; the burden then shifts to the defendant to rebut the presumption that the documents reflect that an "offense for which the person was convicted would have been a violation of section 60-6,196." *State v. Garcia*, 281 Neb. 1, 792 N.W.2d 882 (2011).

Subsection (3) of this section does not provide that mitigating facts presented by the defendant would be considered by the court in determining whether otherwise valid prior convictions should be used to enhance a defendant's sentence. *State v. Brooks*, 22 Neb. App. 598, 858 N.W.2d 267 (2014).

Under the plain language of this section, when sentencing for a driving under the influence conviction, a previous refusal to submit to chemical testing conviction is not in the list of convictions that are prior convictions for the purpose of enhancement, and when sentencing for a refusal conviction, a previous driving under the influence conviction is not in the list of prior convictions which can be used to enhance the refusal conviction. *State v. Hansen*, 16 Neb. App. 671, 749 N.W.2d 499 (2008).

60-6,197.03.

Pursuant to section 29-2262(2)(b), the mandate of subsection (6) of this section that an order of probation "shall also include" 60 days' confinement does not conflict with the provision that a trial court may require the offender to be confined for a period not to exceed 180 days; the minimum jail term for a period granted probation for an offense punishable under subsection (6) of this section is 60 days, and the maximum is 180 days. *State v. Dinslage*, 280 Neb. 659, 789 N.W.2d 29 (2010).

ANNOTATIONS

A license revocation ordered pursuant to this section begins at the time appointed in the court's order. *State v. Lankford*, 17 Neb. App. 123, 756 N.W.2d 739 (2008).

60-6,197.06.

This section does not constrain the trial court's discretion to order when the mandatory 15-year license revocation shall begin. *State v. Policky*, 285 Neb. 612, 828 N.W.2d 163 (2013).

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under this section and must be charged under section 60-6,211.05(5). *State v. Hernandez*, 283 Neb. 423, 809 N.W.2d 279 (2012).

The revocation of an operator's license pursuant to section 60-6,196(2)(c) as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with section 60-6,196(2)(c). *State v. Flores*, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

60-6,197.09.

The imposition of the sentence, absent the pendency of an appeal, concludes the "proceedings" referred to in this section. *State v. Lamb*, 280 Neb. 738, 789 N.W.2d 918 (2010).

A motion to quash is a procedural prerequisite to facially challenge the constitutionality of this section. *State v. Albrecht*, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

For the purposes of determining whether a defendant was participating in criminal proceedings, once a defendant has pleaded guilty and such plea was accepted to one charge, the defendant was obviously participating in that criminal proceeding at the time he pleaded to the second charge when both pleas were accepted at the same time. *State v. Albrecht*, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

60-6,198.

In making a determination as to causation in a prosecution for driving under the influence and causing serious bodily injury, a court should focus on a defendant's act of driving while under the influence of alcohol or drugs and not on his or her intoxication. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

The elements of driving under the influence and causing serious bodily injury are: (1) The defendant was operating a motor vehicle, (2) the defendant was operating a motor vehicle in violation of section 60-6,196 or section 60-6,197, and (3) the defendant's act of driving under the influence proximately caused serious bodily injury to another person. *State v. Irish*, 292 Neb. 513, 873 N.W.2d 161 (2016).

60-6,199.

Because there is no statutory or constitutional requirement that a defendant be advised of his or her rights under this section, there is no constitutional requirement that an advisement must be given in a language the defendant understands. *State v. Wang*, 291 Neb. 632, 867 N.W.2d 564 (2015).

60-6,201.

Unlike section 60-6,210(1), subsection (1) of this section does not limit the use of chemical test results to prosecution under a specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in "any" prosecution "under" a state statute "involving" operation of a motor vehicle while under the influence of alcoholic liquor or "involving" such operation with an excessive level of alcohol. *State v. Guzman-Gomez*, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

60-6,210.

Unlike subsection (1) of this section, section 60-6,201(1) does not limit the use of chemical test results to prosecution under a specific statute; rather, it authorizes the use of results of the specified chemical test as competent evidence in "any" prosecution "under" a state statute "involving" operation of a motor vehicle while under the influence of alcoholic liquor or "involving" such operation with an excessive level of alcohol. *State v. Guzman-Gomez*, 13 Neb. App. 235, 690 N.W.2d 804 (2005).

ANNOTATIONS

60-6,211.05.

Under the language of subsection (2) of this section, if the sentencing court orders the use of a continuous alcohol monitoring device, the convicted person using the continuous alcohol monitoring device must abstain from alcohol use at all times. *State v. Sikes*, 286 Neb. 38, 834 N.W.2d 609 (2013).

An ignition-interlock permitholder who drives a vehicle not equipped with an ignition interlock device may not be charged under section 60-6,197.06 and must be charged under subsection (5) of this section. *State v. Hernandez*, 283 Neb. 423, 809 N.W.2d 279 (2012).

A trial court's refusal to grant the use of an ignition interlock device under this section was proper where the use of the device was not found to be a condition necessary or likely to ensure that the defendant would lead a law-abiding life. *State v. Kuhl*, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

60-6,211.08.

Conviction for possessing an open container of alcohol in a vehicle was invalid when police officers found defendant intoxicated in a vehicle that was parked on a residential driveway and overhanging a public sidewalk. *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,219.

Where a vehicle is equipped with two taillights, subsection (6) of this section requires both taillights to give substantially normal light output and to show red directly to the rear. *State v. Burns*, 16 Neb. App. 630, 747 N.W.2d 635 (2008).

60-6,221.

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in this section, it is a Class III misdemeanor under section 60-6,222. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The standard for a lawful headlight, and, by extension, a lawful auxiliary driving light, is found in this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The terms of section 60-6,225(2) require reference to this section, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

Where a headlight or auxiliary driving light is so glaring or dazzling that an officer reasonably believes the light violates this section, such subjective belief could provide probable cause for a traffic stop. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

Whether a vehicle's front lights are unlawfully glaring or dazzling requires, at least for a conviction of the associated crime, an objective measurement under subsection (2) of this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,222.

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,224.

The specific duty of a driver to dim a vehicle's lights in response to a signal from an oncoming driver is set forth in this section. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

ANNOTATIONS

60-6,225.

Auxiliary driving lights are defined by subsection (2) of this section, and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under section 60-6,222. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

If fog lamps are contemplated under subsection (4) of this section as any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than 25 candlepower, then such fog lamps must be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than 50 feet from the vehicle. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The terms of subsection (2) of this section require reference to section 60-6,221, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. *State v. Carnicle*, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,273.

A court should apply this section before applying a statutory cap on damages. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

60-6,294.

The term "original limitations" as used in section 60-6,298 means the original statutory restrictions listed in this section. *State v. Halverstadt*, 282 Neb. 736, 809 N.W.2d 480 (2011).

60-6,298.

The phrase "exceeding the size or weight specified by the permit" used in subsection (4)(a) of this section clearly refers to either exceeding axle weights or exceeding gross weights. *State v. Halverstadt*, 282 Neb. 736, 809 N.W.2d 480 (2011).

The term "original limitations" as used in this section means the original statutory restrictions listed in section 60-6,294. *State v. Halverstadt*, 282 Neb. 736, 809 N.W.2d 480 (2011).

60-1401.26.

The definition of a motor vehicle dealer under this section entails three requirements. To be a motor vehicle dealer, a person must (1) not be a bona fide consumer; (2) be actively and regularly engaged in selling, leasing for a period of 30 or more days, or exchanging new or used motor vehicles; and (3) buy, sell, exchange, cause the sale of, or offer or attempt to sell new or used motor vehicles. *State v. Merchant*, 288 Neb. 439, 848 N.W.2d 630 (2014).

60-1416.

Mens rea is not required to convict a person for acting without a license under this section because the offense is a public welfare offense. *State v. Merchant*, 285 Neb. 456, 827 N.W.2d 473 (2013).

79-201.

Subsection (2) of this section does not make the start of the public school calendar year the default start date for other schools and does not provide that a child must attend a legally recognized school each day of the public school year. Nor does it require parents to enroll their child in a legally recognized school until they obtain the State's recognition of an exempt homeschool. *State v. Thacker*, 286 Neb. 16, 834 N.W.2d 597 (2013).

Under subsection (2) of this section, an exempt school's ability to complete the minimum instruction hours is the only timing requirement imposed upon an exempt school's calendar year. *State v. Thacker*, 286 Neb. 16, 834 N.W.2d 597 (2013).

Where a juvenile is adjudicated solely on the basis of habitual truancy from school under subsection (3)(b) of section 43-247 and the status of truancy is subsequently terminated by the lawful execution of a parental release authorizing discontinuation of school pursuant to subsection (3)(d) of this section, a juvenile court may terminate its jurisdiction without a finding that such termination is in the best interests of the juvenile. *In re Interest of Kevin K.*, 274 Neb. 678, 742 N.W.2d 767 (2007).

ANNOTATIONS

Compulsory education statutes and juvenile code statutes regarding the neglect of children generally do not pertain to the same subject matter and should not be construed in *pari materia*. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

Subdivision (3)(a) of section 43-247 establishes the juvenile court's jurisdiction over a minor child, while this section and section 79-210 make the minor child's parents or legal guardians culpable for the child's truancy. The county attorney is free to decide whether to proceed utilizing the juvenile code or the compulsory education laws. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

79-209.

Under the former law, subsection (3) of this section permitted a school attendance officer to make a report to the county attorney if a child is absent more than 20 days per year or the hourly equivalent, even if all of the absences are excused due to illness or otherwise. It mandated such a report if the child exceeds the 20-day absence limitation and any of such absences are not excused. In re Interest of Samantha C., 287 Neb. 644, 843 N.W.2d 665 (2014).

Under the former law, this section had no effect upon the juvenile court's exclusive and original jurisdiction over juveniles found to be within the meaning of section 43-247(3)(b). In re Interest of Samantha C., 287 Neb. 644, 843 N.W.2d 665 (2014).

The school's duty to provide services in an attempt to address excessive absenteeism comes from this section, relating to compulsory attendance and the possibility of a parent's being subjected to a criminal sanction. The school has no duty to provide reasonable efforts before an adjudication under subdivision (3)(a) of section 43-247 of the juvenile code. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

79-210.

Subdivision (3)(a) of section 43-247 establishes the juvenile court's jurisdiction over a minor child, while section 79-201 and this section make the minor child's parents or legal guardians culpable for the child's truancy. The county attorney is free to decide whether to proceed utilizing the juvenile code or the compulsory education laws. In re Interest of Laticia S., 21 Neb. App. 921, 844 N.W.2d 841 (2014).

79-254.

School officials' statutory authority to conduct searches of students is implied by the Student Discipline Act. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-262.

School officials have authority to regulate and control student conduct on school grounds, but are not given authority to search off school grounds, including a vehicle parked off school grounds that is not associated with a school-sponsored event or activity. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-267.

This section limits a school district's jurisdiction to discipline students for possession of a controlled substance to conduct occurring on school property, at a school-sponsored activity or athletic event, or in a vehicle owned or used by the school for a school purpose. Driving to school was not a school-sponsored event and was not associated with a school-sponsored event, and a high school did not have implied authority to search a student's vehicle parked off campus. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

This section makes a clear distinction between conduct that occurs on school grounds and conduct that occurs off school grounds. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

This section sets the limits of a school's authority to discipline students for unlawfully possessing a controlled substance. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

79-291.

The Student Discipline Act specifically grants the district court the power to reverse the decision of a board of education if a student's constitutional rights were violated. *J.P. v. Millard Public Schools*, 285 Neb. 890, 830 N.W.2d 453 (2013).

ANNOTATIONS

79-413.

A state committee's approval of a petition for reorganization, including a school district's reallocation of bonding authority, is a "change" within the committee's jurisdiction under subsection (4) of this section, subject to appeal, and it may not be collaterally attacked. *Cumming v. Red Willow Sch. Dist. No. 179*, 273 Neb. 483, 730 N.W.2d 794 (2007).

79-419.

Under the precursor to subsection (2) of this section, merging school boards were not authorized to include in their merger petition a requirement that the surviving school board obtain a majority vote from voters in a former school district or a unanimous vote from school board members before moving grades four through six from an elementary school in a former district. *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007).

79-458.

Under subsection (5) of this section, appeals from a freeholder board must be filed by August 10 when the board either acted or failed to act on a petition by August 1. *Butler Cty. Sch. Dist. v. Freeholder Petitioners*, 283 Neb. 903, 814 N.W.2d 724 (2012).

A party filing a petition under this section has a direct and legal interest in an appeal filed with the district court objecting to the granting of that petition. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

Deficiencies in a petition filed under this section do not necessarily defeat the jurisdiction of a freeholder board. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

In determining whether land is contiguous under this section, a freeholder board shall consider all petitions together in order to find that otherwise noncontiguous land is nevertheless contiguous. *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 759 N.W.2d 464 (2009).

79-515.

A contract continuation clause does not create a contract of indefinite duration in violation of this section. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

79-827.

A contract of a certificated employee may be canceled at any time during the school year pursuant to the provisions of this section. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

A contractual provision purporting to alter the deadline for notice of nonrenewal does not affect a school board's ability to cancel a contract pursuant to this section. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

The notice of cancellation required by this section is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. *Schiefelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-829.

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).

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).

ANNOTATIONS

79-831.

If an employee who is given notice of possible cancellation of his or her contract does not request a hearing within 7 calendar days, a school board has no duty to provide a hearing. *Schieffelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-832.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in this section will be provided. *Schieffelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-834.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to this section, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. *Schieffelbein v. School Dist. No. 0013*, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

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).

79-902.

Disability as defined in subsection (37) of this section has two components: (1) The individual must have a physical or mental impairment of the nature described, and (2) by reason of the impairment, the individual must be unable to engage in a substantially gainful activity. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-951.

If the Public Employees Retirement Board's medical examiner opines that the member is not disabled, the member may offer other medical evidence. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

Subsection (1) of this section ordinarily requires expert medical evidence to establish a disability. *Shepherd v. Chambers*, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-1073.

Because the levy authorized under this section benefits all taxpayers in a learning community, which is the relevant taxing district, this section does not violate the constitutional prohibition in Neb. Const. art. VIII, sec. 4, against a commutation of taxes. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

Because the levy distributed under this section is uniform throughout the entire learning community, which is the relevant taxing district, this section does not violate the uniformity clause in Neb. Const. art. VIII, sec. 1. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

This section was enacted for substantially local purposes, and therefore, it does not violate the prohibition in Neb. Const. art. VIII, sec. 1A, against a property tax for a state purpose. *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 808 N.W.2d 598 (2012).

79-1094.

The school board of any district maintaining more than one school may close any school or schools within the district. *Haskell v. Madison Cty. Sch. Dist. No. 0001*, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

ANNOTATIONS

79-10,105.

This section does not prohibit a school district from entering into a lease-purchase agreement to finance a capital construction project without voter approval if it has not created a nonprofit corporation to issue bonds for the school district. *Nebuda v. Dodge Cty. Sch. Dist.* 0062, 290 Neb. 740, 861 N.W.2d 742 (2015).

79-1601.

This section does not set out a deadline for an exempt school to begin operations. *State v. Thacker*, 286 Neb. 16, 834 N.W.2d 597 (2013).

81-885.01.

Unless otherwise specified in a written agency agreement pursuant to section 76-2422(6), the fiduciary duties owed by a real estate broker derive only from the performance of limited activities defined in subdivision (2) of this section. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

When a client engages a real estate broker to perform any of the activities defined in subdivision (2) of this section, the resulting agency relationship is called a brokerage relationship. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

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).

Pursuant to the Nebraska Real Estate License Act, any person collecting a fee or commission on the sale of real estate must be a licensed real estate broker or salesperson unless they meet one of the exceptions provided in the act. *In re Estate of Ronan*, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-885.04.

The exception provided by subsection (2) of this section is limited to those instances where an attorney is acting within the scope of his duties as an attorney. *In re Estate of Ronan*, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-885.24.

Whether subdivision (13) of this section creates a private right of action against a real estate broker for inducement to breach a contract of sale or lease depends on its purpose and whether the Legislature intended to create such a private right of action. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

Whether subdivision (13) of this section includes an implied right of action against a real estate broker for inducement to breach a contract of sale or lease is distinct and separate from the issue whether this section creates a duty in tort which can be enforced via a negligence action. *Professional Mgmt. Midwest v. Lund Co.*, 284 Neb. 777, 826 N.W.2d 225 (2012).

A real estate broker's actions clearly demonstrated unworthiness under this section. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Double jeopardy was not applicable to a real estate broker's discipline under this section. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

81-8,219.

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning a sight-restricted railroad crossing at which a collision occurred because neither the State nor the county had any mandatory legal duty to improve any sight restrictions at the crossing. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a claim against the State of Nebraska and Cass County concerning the lack of pavement markings at a railroad crossing at which a collision occurred because the decision of whether to place pavement markings at the crossing was discretionary. *Shipley v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Sovereign immunity barred a failure-to-warn claim concerning a sight-restricted railroad crossing; neither the State of Nebraska nor Cass County had a nondiscretionary duty to warn where the truck wash facility alleged to be

ANNOTATIONS

the cause of the sight restriction was built by a private party on private property and was readily apparent to a motorist approaching the crossing. *Shiple v. Department of Roads*, 283 Neb. 832, 813 N.W.2d 455 (2012).

Under subsection (4) of this section, the State has not waived its sovereign immunity for claims of fraudulent concealment. *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010).

Under subsection (9) of this section, the State is immune from liability against allegations of a malfunctioning traffic signal unless the malfunction was not corrected by the State within a reasonable time after it received actual or constructive notice of the problem. *Fickle v. State*, 273 Neb. 990, 735 N.W.2d 754 (2007).

Exceptions found in this section to the general waiver of tort immunity are matters of defense which must be pled and proved by the State. *D.M. v. State*, 23 Neb. App. 17, 867 N.W.2d 622 (2015).

A defendant may affirmatively plead that the plaintiff has failed to state a cause of action under this section because an exception to the waiver of sovereign immunity applies. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

Even though this section has been amended in 1993, 1999, 2004, 2005, and 2007, claims for invasion of privacy are still not among those claims for which sovereign immunity provides protection for State employees or officers. *Bojanski v. Foley*, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

81-8,227.

The beneficence of the discovery rule is not bestowed on a potential plaintiff where the potential plaintiff in fact discovers, or in the exercise of reasonable diligence should have discovered, an injury within the initial period of limitations running from the wrongful act or omission. *Carruth v. State*, 271 Neb. 433, 712 N.W.2d 575 (2006).

81-8,303.

A cause of action for misrepresentation is not a "dispute regarding a contract" under subdivision (1) of this section, because the gravamen of the case is in tort and is independent from any underlying contract. *Zawaideh v. Nebraska Dept. of Health & Human Servs.*, 285 Neb. 48, 825 N.W.2d 204 (2013).

81-8,305.

This section does not violate article VIII, section 9, of the Nebraska Constitution. *Pavers, Inc. v. Board of Regents*, 276 Neb. 559, 755 N.W.2d 400 (2008).

81-1170.01.

Requests need not be made under this section before filing suit in retirement benefits controversies. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

81-1372.

The comparability requirement of the Industrial Relations Act is superseded by the 2-year contract requirement of the State Employees Collective Bargaining Act. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1377.

The specific number of unused sick leave hours included in a retirement calculation does not constitute a retirement program under subsection (2) of this section. *Livengood v. Nebraska State Patrol Ret. Sys.*, 273 Neb. 247, 729 N.W.2d 55 (2007).

81-1382.

The January 10 deadline provided in this section is not jurisdictional. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

ANNOTATIONS

81-1383.

Parties are not permitted to offer additional evidence before the Commission of Industrial Relations. The commission's review of a special master's ruling is an appeal and does not provide for the admission of additional evidence. *State v. State Code Agencies Teachers Assn.*, 280 Neb. 459, 788 N.W.2d 238 (2010).

81-2026.

Subsection (3) of this section, as it existed in 2002, is ambiguous as to the proper distribution of a deceased trooper's annuity where there are surviving minor children who are not all in the care of a surviving spouse. Consistent with the legislative intent of subsection (3) of this section, to provide benefits to the surviving members of a trooper's family, this section requires distribution of benefits to all of a deceased trooper's minor children, regardless of with whom they reside. *Zach v. Eacker*, 271 Neb. 868, 716 N.W.2d 437 (2006).

81-2031.

The election to receive either a refund of contributions plus accrued interest or a monthly annuity is made by "the officer." *Klimek v. Klimek*, 18 Neb. App. 82, 775 N.W.2d 444 (2009).

81-2032.

The amendment of anti-attachment statutes to allow a civil judgment to attach to the distributed retirement assets of State Patrol officers and other public employees who had committed six specified crimes constituted special legislation in violation of the Nebraska Constitution. The Legislature's attempt to create very limited exceptions to an absolute privilege from attachment of a public employee's retirement assets resulted in a law that benefited only a select group of victims and arbitrarily protected public employees who were convicted of comparably serious crimes, yet retained an absolute privilege from attachment of their retirement assets because their crimes were not included in the amendment. *J.M. v. Hobbs*, 288 Neb. 546, 849 N.W.2d 480 (2014).

A benefit is a cash payment or service provided for under an annuity, pension plan, or insurance policy. *J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011).

An annuity is a fixed sum of money payable periodically. *J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011).

This section exempts annuities or benefits a person is entitled to receive under the Nebraska State Patrol Retirement Act from execution, even in the person's possession. *J.M. v. Hobbs*, 281 Neb. 539, 797 N.W.2d 227 (2011).

83-174.01.

This section is not unconstitutionally vague. *In re Interest of A.M.*, 281 Neb. 482, 797 N.W.2d 233 (2011).

A prerequisite of the Sex Offender Commitment Act is a criminal conviction for a sex offense. *In re Interest of J.R.*, 277 Neb. 362, 762 N.W.2d 305 (2009).

83-174.02.

This section provides a mechanism for identifying potentially dangerous sex offenders prior to their release from incarceration and for notifying prosecuting authorities so that they have adequate time to determine whether to file a petition under the Sex Offender Commitment Act before the offender's release date. It does not create any substantive or procedural rights in the offender who is the subject of the mental health evaluation. *In re Interest of D.H.*, 281 Neb. 554, 797 N.W.2d 263 (2011).

83-174.03.

Because lifetime community supervision under this section is an additional form of punishment, a jury, rather than a trial court, must make a specific finding concerning the facts necessary to establish an aggravated offense where such facts are not specifically included in the elements of the offense of which the defendant is convicted. *State v. Alfredson*, 282 Neb. 476, 804 N.W.2d 153 (2011).

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).

ANNOTATIONS

The legislative intent in enacting this section was to establish an additional form of punishment for some sex offenders. *State v. Payan*, 277 Neb. 663, 765 N.W.2d 192 (2009).

Where the facts necessary to establish an aggravated offense as defined by the Sex Offender Registration Act are not specifically included in the elements of the offense of which the defendant is convicted, such facts must be specifically found by the jury in order to impose lifetime community supervision as a term of the sentence. *State v. Payan*, 277 Neb. 663, 765 N.W.2d 192 (2009).

83-178.

For purposes of subsection (2) of this section, "good cause" means a logical or legally sufficient reason in light of all the surrounding facts and circumstances and in view of the very narrow access intended by the Legislature. *Pettit v. Nebraska Dept. of Corr. Servs.*, 291 Neb. 513, 867 N.W.2d 553 (2015).

Whether a person seeking access to an inmate's institutional file shows good cause is a mixed question of law and fact. What the parties show presents questions of fact, which an appellate court reviews for clear error. Whether the showing establishes good cause is a question of law, and an appellate court reviews questions of law independently. Where the facts are undisputed, the entire question becomes one of law. *Pettit v. Nebraska Dept. of Corr. Servs.*, 291 Neb. 513, 867 N.W.2d 553 (2015).

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).

83-183.

This section, when construed with section 83-183.01, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of section 83-183.01. *Hurbenca v. Nebraska Dept. of Corr. Servs.*, 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-183.01.

Section 83-183, when construed with this section, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of this section. *Hurbenca v. Nebraska Dept. of Corr. Servs.*, 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-1,106.

Under subsection (4) of this section, the conduct in question need not be the same or related to the conduct for which time was originally served. *State v. Carnge*, 288 Neb. 347, 847 N.W.2d 302 (2014).

Section 47-503 and subsection (1) of this section use similar language, so the reasoning of cases involving one of these provisions is applicable to cases involving the other. *State v. Wills*, 285 Neb. 260, 826 N.W.2d 581 (2013).

A defendant ordered to complete a work ethic camp was "in custody." *State v. Becker*, 282 Neb. 449, 804 N.W.2d 27 (2011).

Under this section, when consecutive sentences are imposed for two or more offenses, periods of presentence incarceration may be credited only against the aggregate of all terms imposed: an offender who receives consecutive sentences is entitled to credit against only the first sentence imposed, while an offender sentenced to concurrent terms in effect receives credit against each sentence. *State v. Williams*, 282 Neb. 182, 802 N.W.2d 421 (2011).

The phrase "in custody" under this section means judicially imposed physical confinement in a governmental facility authorized for detention, control, or supervision of a defendant before, during, or after a trial on a criminal charge. *State v. Anderson*, 18 Neb. App. 329, 779 N.W.2d 623 (2010).

83-1,107.

A defendant must serve the mandatory minimum sentence before earning good time credit toward either the maximum or minimum sentence. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

ANNOTATIONS

Good time reductions do not apply to mandatory minimum sentences. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

Multiple mandatory minimum sentences must be served consecutively. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

When a mandatory minimum sentence is involved, the mandatory discharge date is computed by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

83-1,108.

"Good time" under this section should not be applied against a mandatory minimum sentence imposed under section 29-2221(1). *Hurbenca v. Nebraska Dept. of Corr. Servs.*, 16 Neb. App. 222, 742 N.W.2d 773 (2007).

83-1,110.

Good time reductions do not apply to mandatory minimum sentences. *State v. Russell*, 291 Neb. 33, 863 N.W.2d 813 (2015).

Although no reduction for good time is accumulated for sentences imposing a mandatory minimum term of incarceration for the duration of that term, this section does not require that all sentences carrying a mandatory minimum term be served consecutively. *State v. Lantz*, 290 Neb. 757, 861 N.W.2d 728 (2015).

A defendant must serve the mandatory minimum sentence before earning good time credit toward either the maximum or minimum sentence. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

Good time reductions do not apply to mandatory minimum sentences. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

Multiple mandatory minimum sentences must be served consecutively. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

When a mandatory minimum sentence is involved, the mandatory discharge date is computed by subtracting the mandatory minimum sentence from the maximum sentence, halving the difference, and adding that difference to the mandatory minimum. *State v. Castillas*, 285 Neb. 174, 826 N.W.2d 255 (2013).

An inmate sentenced to life imprisonment for first degree murder is not eligible for parole until the Nebraska Board of Pardons commutes his or her sentence to a term of years. *Poindexter v. Houston*, 275 Neb. 863, 750 N.W.2d 688 (2008).

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).

83-1,127.02.

This section mandates that a sentencing court must impose a 15-year operator's license revocation whenever a person restricted to operating a motor vehicle equipped with an ignition interlock device is found to have operated a vehicle without such an ignition interlock device. Such a revocation is in addition to, rather than as part of, any term of probation imposed by the sentencing court. *State v. Donner*, 13 Neb. App. 85, 690 N.W.2d 181 (2004).

83-365.

There is no requirement that the Department of Health and Human Services offer proof that the cost of the care, support, maintenance, and treatment is fair and reasonable. *In re Guardianship of Gaube*, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

83-4,111.

The language of this section does not establish a right in inmates to a determination of which rights they retain upon commitment. *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

ANNOTATIONS

The Nebraska Department of Correctional Services' duty to promulgate rules and regulations regarding inmate rights under this section has been fulfilled by the promulgation of 68 Neb. Admin. Code, chs. 1 through 9 (2008). *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

83-4,122.

In prison disciplinary cases which involve the imposition of disciplinary isolation or the loss of good time credit, the standard of proof to sustain the charge is "substantial evidence" rather than "some evidence." *Witmer v. Nebraska Dept. of Corr. Servs.*, 13 Neb. App. 297, 691 N.W.2d 185 (2005).

83-4,145.

Defendants are to be given credit for time served at work camp programs. *State v. Becker*, 282 Neb. 449, 804 N.W.2d 27 (2011).

83-964.

Under former law, Nebraska's statutes specifying electrocution as the mode of inflicting the death penalty are separate, and severable, from the procedures by which the trial court sentences the defendant. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

Under former law, that a method of execution is cruel and unusual punishment bears solely on the legality of the execution of the sentence and not on the validity of the sentence itself. *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008).

83-965.

This section is not an unconstitutional delegation of legislative power. *State v. Ellis*, 281 Neb. 571, 799 N.W.2d 267 (2011).

83-1211.

A service recipient's liability for costs shall not be determined based on a finding of whether such costs are fair and reasonable. *In re Guardianship of Gaube*, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

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).

The Nebraska Department of Correctional Services had no obligation to transport an inmate in its custody to an office where a particular record was located to examine the record. *Russell v. Clarke*, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

84-712.01.

A four-part functional equivalency test is the appropriate analytical model for determining whether a private entity which has an ongoing relationship with a governmental entity can be considered an agency, branch, or department of such governmental entity within the meaning of subsection (1) of this section, such that its records are subject to disclosure upon request under Nebraska's public records laws. The factors to be considered in applying this test are (1) whether the private entity performs a governmental function, (2) the level of governmental funding of the private entity, (3) the extent of government involvement with or regulation of the private entity, and (4) whether the private entity was created by the government. *Frederick v. City of Falls City*, 289 Neb. 864, 857 N.W.2d 569 (2015).

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).

ANNOTATIONS

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).

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).

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).

Records of deaths that occurred at a state-run mental institution, indicating the place of burial, are public records as defined by this section. *State ex rel. Adams Cty. Historical Soc. v. Kinyoun*, 277 Neb. 749, 765 N.W.2d 212 (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).

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.

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).

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).

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).

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).

84-712.08.

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).

ANNOTATIONS

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).

84-901.

Under the Administrative Procedure Act, an appellate court may reverse, vacate, or modify a district court's judgment or final order for errors appearing on the record. *Murray v. Neth*, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

Because the University of Nebraska College of Law Student-Faculty Honor Committee and the College of Law dean are not authorized by law to make rules and regulations, they are not "agencies," and thus, their decisions are not subject to judicial review under the Administrative Procedure Act. *Kerr v. Board of Regents*, 15 Neb. App. 907, 739 N.W.2d 224 (2007).

84-911.

A taxpayer has standing to challenge a state official's failure to comply with a clear statutory duty to assess or collect taxes—as distinguished from legitimate discretion to decide whether to tax. But the taxpayer must show that the official's unlawful failure to comply with a duty to tax would otherwise go unchallenged because no other potential party is better suited to bring the action. Under this section, a taxpayer has standing to challenge an agency's unlawful regulation that negates the agency's statutory duty to assess taxes. No other potential parties are better suited than a taxpayer to claim that a state agency or official has violated a statutory duty to assess taxes when the persons or entities directly and immediately affected by the alleged violation are beneficially, instead of adversely, affected. *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012).

When this section is read consistently with the declaratory judgment statutes, the only limitations placed on the relief that a plaintiff can obtain in a declaratory judgment action under this section are the limitations imposed by sovereign immunity principles. Neither this section nor sovereign immunity bars injunctive relief in a declaratory judgment action under this section when such relief would not require state officials to expend public funds. *Project Extra Mile v. Nebraska Liquor Control Comm.*, 283 Neb. 379, 810 N.W.2d 149 (2012).

A prisoner is not entitled to a declaratory judgment under this section as to the validity of a regulation limiting the amount of property that can be possessed by an inmate, because a prisoner does not enjoy the unqualified right to possess property while in prison. *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012).

84-912.01.

This section did not require a hearing before the Department of Administrative Services to decide the issues raised by the petitioners, the petition for a declaratory order did not require the department to act in a quasi-judicial manner, and the proceeding was not a contested case under the Administrative Procedure Act. *Kaplan v. McClurg*, 271 Neb. 101, 710 N.W.2d 96 (2006).

84-913.03.

Whether the hearing is conducted by videoconference is permissive and discretionary. *Robbins v. Neth*, 15 Neb. App. 67, 722 N.W.2d 76 (2006).

84-914.

Ex parte communications that the director of the Department of Motor Vehicles had with police officers who were potential witnesses at a motorist's administrative license revocation hearing did not violate the motorist's due process rights; neither officer was a party in the license revocation proceeding nor a person outside the Department of Motor Vehicles having an interest in the motorist's case. *Walz v. Neth*, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

84-917.

An inmate's petition for the reclassification of custody level from medium custody to minimum custody did not involve a "contested case" and was thus not subject to judicial review under the Administrative Procedure Act. *Purdie v. Nebraska Dept. of Corr. Servs.*, 292 Neb. 524, 872 N.W.2d 895 (2016).

An issue that has not been presented in a petition for judicial review has not been properly preserved for consideration by the district court. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).

ANNOTATIONS

Subsection (5)(b)(i) of this section permits the district court to review only matters which were not properly raised in the proceedings before an administrative agency. *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).

A party is "aggrieved" within the meaning of subsection (1) of this section if it has standing to invoke a court's jurisdiction—that is, if it has a legal or equitable right, title, or interest in the subject matter of the controversy. *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010).

Any aggrieved party seeking judicial review of an administrative decision under the Administrative Procedure Act must file a petition within 30 days after service of that decision, pursuant to this section. The Administrative Procedure Act makes no mention of an extended or different deadline for filing a cross-petition in the district court. *Ahmann v. Correctional Ctr. Lincoln*, 276 Neb. 590, 755 N.W.2d 608 (2008).

In accordance with subsection (5)(a) of this section, when reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact that was not presented to the agency, because the taking of such evidence would impermissibly expand the court's statutory scope of review de novo on the record of the agency. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

Under subsection (6)(b) of this section, a district court has discretion concerning the disposition of an appeal from an administrative agency. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 272 Neb. 390, 722 N.W.2d 10 (2006).

An assignment of error concerning a witness's testimony and evidence was not considered on appeal, because the complaining party did not raise or discuss the issue in its petition for review filed with the district court. *Nebraska Pub. Advocate v. Nebraska Pub. Serv. Comm.*, 19 Neb. App. 596, 815 N.W.2d 192 (2012).

The Department of Banking and Finance is statutorily authorized to require payment for the costs of preparing the official record from the party seeking review of its decision prior to transmitting the record. *JHK, Inc. v. Nebraska Dept. of Banking & Finance*, 17 Neb. App. 186, 757 N.W.2d 515 (2008).

The district court lacked subject matter jurisdiction because the petitioner failed to timely include as a party defendant the Department of Correctional Services, a necessary party under the Administrative Procedure Act. *Tlamka v. Parry*, 16 Neb. App. 793, 751 N.W.2d 664 (2008).

In a true de novo review, the district court's decision is to be made independently of the agency's prior disposition and the district court is not required to give deference to the findings of fact and the decision of the agency hearing officer. *DeBoer v. Nebraska Dept. of Motor Vehicles*, 16 Neb. App. 760, 751 N.W.2d 651 (2008).

In an appeal under subsection (5)(a) of this section, the district court conducts a de novo review of the record of the agency. *Clark v. Tyrrell*, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Pursuant to subsection (2)(a) of this section, the phrase "county where the action is taken" is the site of the first adjudicated hearing of a disputed claim. *Yelli v. Neth*, 16 Neb. App. 639, 747 N.W.2d 459 (2008).

If petition for review filed pursuant to this section is not timely, district court does not have jurisdiction to consider merits and can properly dismiss petition. *Roubal v. State*, 14 Neb. App. 554, 710 N.W.2d 359 (2006).

Judgments rendered by an administrative agency acting in a quasi-judicial capacity are not subject to collateral attack in a separate action in county court challenging the validity of the underlying claim, but must be properly appealed pursuant to this section. *In re Guardianship of Gaube*, 14 Neb. App. 259, 707 N.W.2d 16 (2005).

84-918.

A judgment or final order rendered by a district court in a judicial review under the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing such an order, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Parker v. State ex rel. Bruning*, 276 Neb. 359, 753 N.W.2d 843 (2008).

84-1301.

Although the actual appreciation or increase in value of a state employee's pension occurred during the marriage, such increase was not due to the efforts or contribution of marital funds by the parties during the marriage, but,

ANNOTATIONS

rather, was guaranteed prior to the marriage by operation of subsection (17) of this section. Therefore, such increase was not marital property. *Coufal v. Coufal*, 291 Neb. 378, 866 N.W.2d 74 (2015).

84-1408.

A county board of equalization is a public body whose meetings shall be open to the public. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1409.

As an administrative agency of the county, a county board of equalization is a public body. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

The electors of a township at their annual meeting are a public body under the Open Meetings Act. *State ex rel. Newman v. Columbus Township Bd.*, 15 Neb. App. 656, 735 N.W.2d 399 (2007).

84-1410.

There is no absolute discovery privilege for communications that occur during a closed session. *State ex rel. Upper Republican NRD v. District Judges*, 273 Neb. 148, 728 N.W.2d 275 (2007).

84-1411.

Under subsection (1) of this section, the Legislature has imposed only two conditions on the public body's notification method of a public meeting: (1) It must give reasonable advance publicized notice of the time and place of each meeting and (2) it must be recorded in the public body's minutes. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

A county board of commissioners and a county board of equalization are not required to give separate notices when the notice states only the time and place that the boards meet and directs a citizen to where the agendas for each board can be found. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

A county board of equalization is a public body which is required to give advanced publicized notice of its meetings. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

Notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

True notice of a meeting is not given by burying such in the minutes of a prior board proceeding. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1413.

There is no requirement that a public body make a record of where notice was published or posted. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1414.

The Legislature has granted standing to a broad scope of its citizens for the very limited purpose of challenging meetings allegedly in violation of the Open Meetings Act, so that they may help police the public policy embodied by the act. *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010).

Any citizen of the state may commence an action to declare a public body's action void. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

The reading of ordinances constitutes a formal action under subsection (1) of this section. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

Voiding an entire meeting is a proper remedy for violations of the Open Meetings Act. Once a meeting has been declared void pursuant to Nebraska's public meetings law, board members are prohibited from considering any information obtained at the illegal meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

ANNOTATIONS

86-140.

This section places no limitation on the right to negotiate or review access charges. *AT&T Communications v. Nebraska Public Serv. Comm.*, 283 Neb. 204, 811 N.W.2d 666 (2012).

86-158.

All appeals from orders of the Nebraska Public Service Commission are to follow the procedural requirements of the Administrative Procedure Act. *Chase 3000, Inc. v. Nebraska Pub. Serv. Comm.*, 273 Neb. 133, 728 N.W.2d 560 (2007).

86-2,106.

Even if subdivision (3)(a) of this section prohibits a county attorney from obtaining a person's noncontent telecommunication records by issuing an investigative subpoena, the Legislature has not provided a remedy for a violation of this provision, and the violation of a state statute restricting searches is insufficient to show a Fourth Amendment violation under the U.S. Constitution. *State v. Knutson*, 288 Neb. 823, 852 N.W.2d 307 (2014).

86-324.

The Nebraska Telecommunications Universal Service Fund Act is not an unconstitutional delegation of authority to the Public Service Commission. *Schumacher v. Johanns*, 272 Neb. 346, 722 N.W.2d 37 (2006).

The surcharge assessed by the Public Service Commission based on the Nebraska Telecommunications Universal Service Fund Act is not a tax. *Schumacher v. Johanns*, 272 Neb. 346, 722 N.W.2d 37 (2006).

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).

87-127.

The construction given the federal Trademark Act of 1946 as amended (Lanham Trade-Mark Act) should be examined as persuasive authority for interpreting and construing the Trademark Registration Act. *ADT Security Servs. v. A/C Security Systems*, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

The Lanham Trade-Mark Act provides that a party can recover the infringer's profits, any damages sustained, and the costs of the action. *ADT Security Servs. v. A/C Security Systems*, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-128.

Pursuant to subsection (1) of this section, the statutory hallmarks of an abandoned service or trademark are (a) when its use has been discontinued with intent not to resume such use, which may be inferred from the circumstances, or its nonuse for 2 consecutive years shall constitute prima facie evidence of abandonment or (b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark. *ADT Security Servs. v. A/C Security Systems*, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-301.

The terms of the Uniform Deceptive Trade Practices Act provide only for equitable relief consistent with general principles of equity. *State ex rel. Stenberg v. Consumer's Choice Foods*, 276 Neb. 481, 755 N.W.2d 583 (2008).

87-302.

To establish a violation of the Uniform Deceptive Trade Practices Act, there must have been a representation regarding the nature of goods or services and the representation must have been for characteristics or benefits that

ANNOTATIONS

the goods or services did not have. *State ex rel. Stenberg v. Consumer's Choice Foods*, 276 Neb. 481, 755 N.W.2d 583 (2008).

87-303.

Nebraska's Uniform Deceptive Trade Practices Act does not permit an injunction to prevent the copying of a product. *Gengenbach v. Hawkins Mfg.*, 18 Neb. App. 488, 785 N.W.2d 853 (2010).

Under Nebraska's Uniform Deceptive Trade Practices Act, injunctive relief granted for the copying of an article is limited to the prevention of confusion or misunderstanding as to the source. *Gengenbach v. Hawkins Mfg.*, 18 Neb. App. 488, 785 N.W.2d 853 (2010).

By its own terms, subsection (a) of this section provides only for equitable relief consistent with general principles of equity. *Reinbrecht v. Walgreen Co.*, 16 Neb. App. 108, 742 N.W.2d 243 (2007).

The Uniform Deceptive Trade Practices Act, specifically this section, does not provide a private right of action for damages. *Reinbrecht v. Walgreen Co.*, 16 Neb. App. 108, 742 N.W.2d 243 (2007).

87-502.

Although Nebraska's Trade Secrets Act is based on the Uniform Trade Secrets Act, Nebraska's definition of a trade secret differs significantly from the uniform act. If an alleged trade secret is ascertainable at all by any means that are not "improper," the would-be secret is peremptorily excluded from coverage under Nebraska's act. *First Express Servs. Group v. Easter*, 286 Neb. 912, 840 N.W.2d 465 (2013).

88-526.

Notice of an in-store transfer is considered prima facie evidence that an in-store transfer occurred, but it is not the only evidence that can establish the occurrence of an in-store transfer. *In re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

88-530.

Issuance of a check does not occur when the sale of grain occurs or the date the check was written. Instead, issuance is the date that a check is first delivered by the maker or drawer. *In re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

The operative date for check holder claims is the date the check was issued. *In re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

The warehouse bond and the dealer bond cannot be combined, because the activity covered by each bond is unique and the requirements for bond protection under each bond are different. *In re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

88-547.

When the Public Service Commission adjudicates claims under the Grain Warehouse Act, its objective is to determine those owners, depositors, storers, or qualified check holders at the time a warehouse is closed. *In re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781 (2015).

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 1-103.

Common-law claims are displaced when the Uniform Commercial Code applies. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011).

ANNOTATIONS

UCC 2-102.

The Uniform Commercial Code did not apply to a contract for the sale of an ongoing grain business, including both goods and nongoods, because the principal purpose of the transaction was the sale of nongoods. *MBH, Inc. v. John Otte Oil & Propane*, 15 Neb. App. 341, 727 N.W.2d 238 (2007).

Whether the Uniform Commercial Code applies to a contract for the sale of both goods and nongoods is a question of law. *MBH, Inc. v. John Otte Oil & Propane*, 15 Neb. App. 341, 727 N.W.2d 238 (2007).

UCC 2-201.

An agreement for the purchase of a truck for more than \$500 that is not signed by the party against whom enforcement is sought is unenforceable unless one of the limited exceptions set forth in this section is present. *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).

The fact that there was no evidence of any oral or written agreement to purchase a truck that had a purchase price of more than \$500 is sufficient to establish the absence of a purchase agreement that conforms to this section. *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).

A writing confirming an oral agreement for the sale of goods valued at \$500 or more is not insufficient to create an enforceable contract simply because it incorrectly states a term agreed to by the parties. *McCaulley v. Nebraska Furniture Mart*, 21 Neb. App. 125, 838 N.W.2d 38 (2013).

UCC 2-207.

Pursuant to subsection (2) of this section, the failure by the buyers, as nonmerchants, to object to a pricing error clause on the second page of an invoice for the purchase of bedroom furniture, which clause provided that "[p]ricing or mathematical errors are subject to revision by [seller] upon written notice to [b]uyer," could not be construed as an acceptance of the pricing error clause as an additional term of the contract. *McCaulley v. Nebraska Furniture Mart*, 21 Neb. App. 125, 838 N.W.2d 38 (2013).

UCC 2-312.

The seller breaches the warranty of title under this section by delivering a defective certificate of title to the buyer of a motor vehicle. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

The seller breaches the warranty of title under this section if there is a substantial cloud or shadow over the title, even if no third party has come forward with a superior claim. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

UCC 2-313.

Pursuant to this section, in order to create an express warranty, the seller must make an affirmation of fact or promise to the buyer which relates to the goods and becomes part of the basis of the bargain. *Freeman v. Hoffman-La Roche, Inc.*, 260 Neb. 552, 618 N.W.2d 827 (2000).

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).

UCC 2-606.

Evidence that someone tried to return a truck that was in their possession for the purpose of a test drive is sufficient to show that the truck was not accepted within the meaning of this section. *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).

UCC 2-607.

Pursuant to subdivision (3)(a) of this section, whether the notice given is satisfactory and whether it is given within a reasonable time are generally questions of fact to be measured by all the circumstances of the case. *Fitl v. Strek*, 269 Neb. 51, 690 N.W.2d 605 (2005).

ANNOTATIONS

Pursuant to subsection (4) of this section, the burden is on the buyer to show a breach with respect to the goods accepted. *Fitl v. Strek*, 269 Neb. 51, 690 N.W.2d 605 (2005).

The notice requirement set forth in subdivision (3)(a) of this section serves three purposes. It provides the seller with an opportunity to correct any defect, to prepare for negotiation and litigation, and to protect itself against stale claims asserted after it is too late for the seller to investigate them. *Fitl v. Strek*, 269 Neb. 51, 690 N.W.2d 605 (2005).

UCC 2-714.

If the buyer accepts defective goods, damages are measured under this section. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

The existence of "special circumstances" under this section is not a precondition to a buyer's recovery of incidental and consequential damages under section 2-715. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

UCC 2-715.

Consequential damages under this section include the buyer's loss of use of the goods. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

Incidental damages under this section include the cost of storing defective goods. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

The existence of "special circumstances" under section 2-714 is not a precondition to a buyer's recovery of incidental and consequential damages under this section. *McCoolidge v. Oyvetsky*, 292 Neb. 955, 874 N.W.2d 892 (2016).

UCC 2-725.

Pursuant to subsection (2) of this section, in order to constitute a future performance warranty, the terms of the warranty must unambiguously indicate that the manufacturer is warranting the future performance of the good for a specified period of time. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the determination of a discovery date is essentially an inquiry into all of the facts and circumstances facing the buyer; thus, a court should examine all relevant evidence that bears on the buyer's discovery. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the mere existence of "repair or replace" language in a warranty will not disturb a finding that the warranty extends to future performance. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, when a warranty extends to future performance, the statute of limitations is tolled and the cause of action does not begin to accrue until the breach of that warranty is or should have been discovered. The discovery analysis should focus on the buyer's knowledge of the nature and extent of the problem(s) with the goods. It is only when a buyer discovers, or should have discovered, facts sufficient to doubt the overall quality of the goods that subsection (2) is satisfied and the statute of limitations begins to run. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

Subsection (1) of this section prohibits the parties, at least by original agreement, from extending the statute of limitations. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

The future performance exception contained in subsection (2) of this section applies only to an express warranty and not to an implied warranty. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

The limitations period was designed to be relatively short to serve as a point of finality for businesses after which they could destroy records without the fear of subsequent suits. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

The statute of limitations accrues upon tender, unless the warranty extends to future performance. There is no exception for new warranties extended postsale, and the creation of such an exception is not a matter for this court. *Controlled Environ. Constr. v. Key Indus. Refrig.*, 266 Neb. 927, 670 N.W.2d 771 (2003).

ANNOTATIONS

UCC 3-104.

Under subsection (a) of this section, an instrument may have a variable interest rate, but the principal must be fixed. A fixed principal is an absolute requisite to negotiability. *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260 (2012).

UCC 3-118.

Pursuant to subsection (g) of this section, in the absence of fraudulent concealment by the defendant, the discovery rule does not toll the statute of limitations for claims involving negotiable instruments under the Uniform Commercial Code. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 3-309.

Under this section and section 30-2456, a successor personal representative may enforce a lost note made payable to his or her decedent if the successor proves by clear and convincing evidence that (1) the predecessor personal representative was in possession of the notes and entitled to enforce them when the loss of possession occurred; (2) the loss of possession was not the result of a voluntary transfer by predecessor or lawful seizure; and (3) possession of the notes cannot be obtained because they were either destroyed, their whereabouts cannot be determined, or they are in the wrongful possession of an unknown person or a person who cannot be found or is not amenable to service of process. Where an estate has insufficient funds to provide for an indemnification bond, a court's withholding of judgment from the personal representative until the statute of limitations for enforcing negotiable instruments expires is a reasonable exercise of discretion in providing adequate protection for the defendant under subsection (b) of this section. *Fales v. Norine*, 263 Neb. 932, 644 N.W.2d 513 (2002).

UCC 3-419.

A person receiving only an indirect benefit from a transaction can qualify as an accommodation party. *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007).

Whether a person is an accommodation party is a question of fact. *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007).

UCC 3-420.

When this section applies, a litigant cannot rely on common-law causes of action. *Zornes v. Zornes*, 292 Neb. 271, 872 N.W.2d 571 (2015).

Common-law claims in which the plaintiff alleges that a bank made or obtained payment on an instrument to a person not entitled to enforce the instrument or receive payment on it are displaced by the Uniform Commercial Code. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 3-604.

Pursuant to subsection (2) of section 27-804, an alleged verbal cancellation or discharge of a promissory note cannot be said to be against a decedent's pecuniary interest, because there was no evidence of discharge by one of the physical acts, as detailed in Uniform Commercial Code section 3-604(a)(i), nor was there a signed writing, as detailed in section 3-604(a)(ii), offered or received into evidence which purported to discharge the debt owed to the decedent. *Haynes v. Dover*, 17 Neb. App. 640, 768 N.W.2d 140 (2009).

UCC 3-605.

Under former section 3-606, it discharges only the obligations of those parties who sign a negotiable instrument in the capacity of a surety. *Borley Storage & Transfer Co. v. Whitted*, 271 Neb. 84, 710 N.W.2d 71 (2006).

CHAPTER 1

ACCOUNTANTS

Section

- 1-105. Act, how cited.
- 1-106. Terms, defined.
- 1-113. Advisory committee; membership.
- 1-116. Certified public accountant; examination; eligibility.
- 1-118. Certified public accountant; reexamination; waiting period.
- 1-119. Certified public accountant; examination fee.
- 1-121. Certified public accountant; fees; when payable.
- 1-136.02. Permit; when issued.
- 1-136.04. Permit issuance; experience in lieu of being a college or university graduate.
- 1-153. Peer review; rules and regulations.

1-105 Act, how cited.

Sections 1-105 to 1-171 shall be known and may be cited as the Public Accountancy Act.

Source: Laws 1957, c. 1, § 64, p. 78; Laws 1991, LB 75, § 14; Laws 1994, LB 957, § 7; R.S.Supp., 1996, § 1-169; Laws 1997, LB 114, § 1; Laws 2009, LB31, § 1; Laws 2015, LB159, § 1.

1-106 Terms, defined.

For purposes of the Public Accountancy Act, unless the context otherwise requires:

- (1) Board means the Nebraska State Board of Public Accountancy;
- (2) Certificate means a certificate issued under sections 1-114 to 1-124;
- (3) Firm means a partnership, limited liability company, or corporation engaged in the practice of public accountancy in this state entitled to register with the board or a proprietorship engaged in the practice of public accountancy in this state;
- (4) Partnership includes, but is not limited to, a limited liability partnership;
- (5) Peer review means a review of one or more aspects of the professional work of a firm that either or both performs attest engagements or performs compilations by an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state and who is not affiliated with the firm being reviewed;
- (6) Permit means a permit to engage in the practice of public accountancy in this state issued under section 1-136;
- (7) Practice privilege means the privilege of an accountant to practice public accountancy or hold himself or herself out as a certified public accountant in this state in accordance with section 1-125.01;
- (8) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States; and

(9) Temporary practice privilege means the privilege of a foreign accountant to temporarily practice public accountancy in this state in accordance with section 1-125.02.

Source: Laws 1957, c. 1, § 1, p. 55; Laws 1991, LB 75, § 1; Laws 1997, LB 114, § 3; Laws 2009, LB31, § 2; Laws 2015, LB159, § 2.

1-113 Advisory committee; membership.

(1) The board shall appoint an advisory committee consisting of at least seven members. A majority of the members shall be appointed as representatives of the postsecondary educational institutions of Nebraska engaged in the instruction of accounting and auditing, including the University of Nebraska, the Nebraska state colleges, and private universities and colleges. One member of the advisory committee shall be a certified public accountant who is a member of the board.

(2) The advisory committee shall meet at the direction of the board and shall advise the board upon the rules and regulations for section 1-116 relating to educational requirements. The board may also consult the advisory committee on any other issues which it deems appropriate.

Source: Laws 1991, LB 75, § 2; Laws 1997, LB 114, § 11; Laws 2016, LB853, § 1.

1-116 Certified public accountant; examination; eligibility.

Prior to January 1, 1998, a person shall be eligible to take the examination described in section 1-114 if he or she meets the requirements of subdivision (1)(a) of section 1-114.

Any person making initial application on or after January 1, 1998, to take the examination described in section 1-114 shall be eligible to take the examination if he or she has completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by a regional accrediting agency recognized by the United States Department of Education or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit. A person who expects to complete the postsecondary academic credit and earn the degree as required by this section within sixty days following when the examination is held shall be eligible to take such examination, but such person shall not receive any credit for such examination unless evidence satisfactory to the board showing that such person has completed the postsecondary academic credit and earned the degree as required by this section is received by the board within ninety days following when the examination is held. The board shall not prescribe the specific curricula of colleges or universities. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 1, § 11, p. 59; Laws 1976, LB 619, § 2; Laws 1984, LB 473, § 6; Laws 1991, LB 75, § 5; Laws 1997, LB 114, § 13; Laws 1997, LB 752, § 49; Laws 1999, LB 346, § 1; Laws 2009, LB31, § 7; Laws 2014, LB967, § 1.

1-118 Certified public accountant; reexamination; waiting period.

(1) The board may by rule and regulation prescribe the terms and conditions under which a person who does not pass the examination may be reexamined. The board may also provide by rule and regulation for a reasonable waiting period for reexamination.

(2) A person shall be entitled to any number of reexaminations under section 1-114 subject to the rules and regulations of the board.

Source: Laws 1957, c. 1, § 13, p. 59; Laws 1976, LB 619, § 4; Laws 1984, LB 473, § 8; Laws 1991, LB 75, § 7; Laws 1997, LB 114, § 15; Laws 2003, LB 214, § 2; Laws 2009, LB31, § 8; Laws 2016, LB853, § 2.

1-119 Certified public accountant; examination fee.

The board shall charge a fee as established by the board not to exceed two hundred dollars for the examination provided for under the Public Accountancy Act. An applicant for the examination may be required to pay additional fees as charged by and remitted or paid to a third party for administering the examination, if required by the board.

Source: Laws 1957, c. 1, § 14, p. 60; Laws 1976, LB 619, § 5; Laws 1976, LB 961, § 1; Laws 1979, LB 278, § 1; Laws 1984, LB 473, § 9; Laws 1991, LB 75, § 8; Laws 1997, LB 114, § 16; Laws 2003, LB 214, § 3; Laws 2009, LB31, § 9; Laws 2016, LB853, § 3.

1-121 Certified public accountant; fees; when payable.

The applicable fee shall be paid by the applicant at the time he or she applies for examination or reexamination.

Source: Laws 1957, c. 1, § 16, p. 60; Laws 1991, LB 75, § 10; Laws 1997, LB 114, § 18; Laws 2016, LB853, § 4.

1-136.02 Permit; when issued.

(1) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a certificate as a certified public accountant when such holder has had:

(a) Two years of accounting experience satisfactory to the board, in any state or foreign country, in employment as an accountant in a firm, proprietorship, partnership, corporation, limited liability company, or other business entity authorized in any state to engage in the practice of public accountancy under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state;

(b) Except as provided in subdivision (c) of this subsection, three years of accounting experience satisfactory to the board, in any state or foreign country, in employment as (i) an accountant in government or business under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state or (ii) faculty at a college or university of recognized standing under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state; or

(c) Two years of accounting experience satisfactory to the board in employment as an accountant in the office of the Auditor of Public Accounts or the Department of Revenue under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state.

(2) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a reciprocal certificate issued under section 1-124 upon a showing that:

(a) He or she meets all current requirements in this state for issuance of a permit at the time the application is made; and

(b) At the time of the application for a permit the applicant, within the ten years immediately preceding application, meets the experience requirement in subdivision (1)(a), (b), or (c) of this section.

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19; Laws 2013, LB27, § 1; Laws 2016, LB853, § 5; Laws 2017, LB56, § 1.

1-136.04 Permit issuance; experience in lieu of being a college or university graduate.

Any person who has passed the examination described in section 1-114 may qualify for issuance of a permit under subdivision (1)(a) of section 1-136 by (1) having four years of public accounting experience satisfactory to the board in any state or foreign country in practice as a certified public accountant or as a public accountant or in any state or foreign country in employment as a staff accountant by anyone engaging in the practice of public accountancy, or any combination of either of such types of experience, or (2) having five years of auditing experience satisfactory to the board in the office of the Auditor of Public Accounts or in the Department of Revenue, in lieu of being a graduate from a college or university of recognized standing.

Source: Laws 1977, LB 290, § 6; Laws 1984, LB 473, § 19; Laws 1991, LB 75, § 13; Laws 1997, LB 114, § 30; Laws 2009, LB31, § 20; Laws 2016, LB853, § 6.

1-153 Peer review; rules and regulations.

The board may adopt and promulgate rules and regulations to require a firm to enroll in and comply with all requirements of a board-approved program of peer review and comply with all restrictions placed on any permit by the board in response to the results of a peer review.

Source: Laws 2015, LB159, § 3.

CHAPTER 2

AGRICULTURE

Article.

2. State and County Fairs.
 - (f) County Agricultural Society Act. 2-259, 2-264.
3. Community Gardens Act. 2-301 to 2-305.
9. Noxious Weed Control. 2-945.01 to 2-970.
10. Plant Diseases, Insect Pests, and Animal Pests.
 - (j) Grasshoppers and Other Pests. 2-1066 to 2-1071. Repealed.
 - (k) Plant Protection and Plant Pest Act. 2-1072 to 2-10,116.01.
12. Horseracing. 2-1203 to 2-1242.
15. Nebraska Natural Resources Commission.
 - (a) General Provisions. 2-1501 to 2-1513.
 - (c) Nebraska Resources Development Fund. 2-1587 to 2-1592.
 - (e) Water Planning and Review Process. 2-15,106.
18. Potato Development.
 - Part I. 2-1807, 2-1808.
26. Pesticides. 2-2624 to 2-2656.
32. Natural Resources. 2-3204 to 2-3228.
35. Graded Eggs. 2-3501 to 2-3526.
37. Dry Bean Resources. 2-3753 to 2-3763.
38. Marketing, Development, and Promotion of Agricultural Products.
 - (a) Nebraska Agricultural Products Marketing Act. 2-3812.
 - (c) Agricultural Products Promotion and Development. 2-3815.
39. Milk.
 - (c) Dairy Industry Development Act. 2-3951 to 2-3962.
 - (d) Nebraska Milk Act. 2-3965 to 2-3989.
 - (e) Dairy Study. 2-3993. Repealed.
43. Agricultural Liming Materials. 2-4323 to 2-4327.
46. Erosion and Sediment Control. 2-4603 to 2-4613.
49. Climate Assessment. 2-4902.
53. Carbon Sequestration. Repealed.
57. Industrial Hemp. 2-5701.

ARTICLE 2

STATE AND COUNTY FAIRS

(f) COUNTY AGRICULTURAL SOCIETY ACT

Section

- 2-259. County fairgrounds; equipment purchase; additional tax levy.
 2-264. County agricultural society; powers relating to real estate.

(f) COUNTY AGRICULTURAL SOCIETY ACT

2-259 County fairgrounds; equipment purchase; additional tax levy.

Pursuant to a request by a county agricultural society, the county board of any county may levy an additional levy of three and five-tenths cents on each one hundred dollars of taxable valuation, or any part thereof, for the purpose of acquiring an interest in real property to comprise a portion or all of the county fairgrounds, for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds, over and above the operational tax levy authorized in section 2-257, or for the purpose of purchas-

ing equipment. Such levy shall not exceed the amount actually required for such acquisition or work and shall be subject to section 77-3443.

Source: Laws 1969, c. 11, § 7, p. 149; Laws 1977, LB 484, § 2; Laws 1979, LB 187, § 7; Laws 1988, LB 977, § 1; Laws 1992, LB 398, § 4; Laws 1992, LB 719A, § 4; R.S.Supp.,1996, § 2-203.06; Laws 1997, LB 469, § 10; Laws 1999, LB 437, § 24; Laws 2000, LB 1190, § 1; Laws 2014, LB597, § 1.

2-264 County agricultural society; powers relating to real estate.

With the consent of the county board of the county within which the real estate is located, a county agricultural society may exchange its real estate and improvements for other real estate and improvements or may lease or sell its real estate and improvements and may make, execute, deliver, and accept all proper or necessary conveyances relating to such exchange, lease, sale, or purchase. County board approval is not required for leases having a term of less than ninety days. The right of the county to real estate and improvements as provided in section 2-263 shall extend to real estate, improvements, or proceeds derived from any exchange, sale, or purchase of real estate or improvements acquired with the additional tax levy provided in section 2-259.

A county agricultural society may purchase real estate and improve the same. The payment of the purchase price may be secured by mortgage or deed of trust.

Source: Laws 1879, § 15, p. 401; Laws 1905, c. 1, § 1, p. 52; R.S.1913, § 11; C.S.1922, § 11; C.S.1929, § 2-206; Laws 1931, c. 2, § 1, p. 58; C.S.Supp.,1941, § 2-206; R.S.1943, § 2-210; Laws 1967, c. 3, § 1, p. 71; R.S.1943, (1991), § 2-210; Laws 1997, LB 469, § 15; Laws 2014, LB597, § 2.

ARTICLE 3

COMMUNITY GARDENS ACT

Section

2-301. Act, how cited.

2-302. Legislative findings and declarations; legislative intent; purpose of act.

2-303. Terms, defined.

2-304. Use of vacant public land; conditions; application; response.

2-305. Repealed. Laws 2017, LB644, § 21.

2-301 Act, how cited.

Sections 2-301 to 2-304 shall be known and may be cited as the Community Gardens Act.

Source: Laws 2015, LB175, § 11; Laws 2017, LB644, § 1.

2-302 Legislative findings and declarations; legislative intent; purpose of act.

(1) The Legislature finds and declares that:

(a) Community gardens provide significant health, educational, and social benefits to the general public, especially for those who reside in urban and suburban areas of this state;

(b) The community garden movement (i) continues to provide low-cost food that is fresh and nutritious for those who may be unable to readily afford fresh

fruits and vegetables for themselves or their families, (ii) promotes public health and healthier individual lifestyles by encouraging better eating habits and increased physical activity by growing food, (iii) fosters the retention and expansion of open spaces, particularly in urban environments, (iv) enhances urban and suburban environmental quality and community beautification, (v) provides inexpensive community building activities, recreation, and physical exercise for all age groups, (vi) establishes a safe place for community involvement and helps to reduce the incidence of crime, (vii) engenders a closer relationship between urban residents, nature, and the local environment, and (viii) fosters green job training and ecological education at all levels; and

(c) It is the public policy of this state to promote and foster growth in the number of community gardens and the acreage of such gardens.

(2) It is the intent of the Legislature and the purpose of the Community Gardens Act to foster growth in the number, size, and scope of community gardens in this state by encouraging state agencies, municipalities, and private parties in their efforts to promote community gardens.

Source: Laws 2015, LB175, § 12.

2-303 Terms, defined.

For purposes of the Community Gardens Act:

(1) Community garden means public or private land upon which individuals have the opportunity to raise a garden on land which they do not themselves own;

(2) Garden means a piece or parcel of land appropriate for cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg production, maple syrup, ornamental or vegetable plants, nursery products, or vegetables;

(3) Municipality means any county, village, or city or any office or agency of a county, village, or city;

(4) State agency means any department or other agency of the State of Nebraska;

(5) Use means to avail oneself of or to employ without conveyance of title gardens on vacant public land by any individual or organization; and

(6) Vacant public land means any land owned by the state or another governmental subdivision, including a municipality, that is not in use for a public purpose, is otherwise unoccupied, idle, or not being actively utilized for a period of at least six months, and is suitable for garden use.

Source: Laws 2015, LB175, § 13.

2-304 Use of vacant public land; conditions; application; response.

(1) A state agency or municipality having title to vacant public land may permit community organizations to use such lands for community garden purposes. Such use of vacant public land may be conditioned on the community organization having liability insurance and accepting liability for injury or damage resulting from use of the vacant public land for community garden purposes. State agencies and municipalities may adopt and promulgate rules, regulations, ordinances, or resolutions to establish an application process for a community garden. The applicant may include a request for access to a fire hydrant or other source of water owned or operated by the state agency or

municipality or by a utility district in order to provide water to the community garden. The state agency, municipality, or utility district shall consider whether to supply the water to the applicant at a reduced or fixed rate.

(2) A state agency or municipality which receives an application pursuant to this section shall respond to the applicant within sixty days from the date on which the application is received and shall make a final determination within one hundred eighty days from such date.

Source: Laws 2015, LB175, § 14.

2-305 Repealed. Laws 2017, LB644, § 21.

ARTICLE 9

NOXIOUS WEED CONTROL

Section

- 2-945.01. Act, how cited.
- 2-955. Notice; kinds; effect; failure to comply; powers of control authority.
- 2-958.02. Grant program; applications; selection; considerations; priority; section, how construed; director; duties.
- 2-967. Repealed. Laws 2016, LB1038, § 19.
- 2-968. Repealed. Laws 2016, LB1038, § 19.
- 2-969. Riparian Vegetation Management Task Force; created; members.
- 2-970. Riparian Vegetation Management Task Force; duties; meetings; report.

2-945.01 Act, how cited.

Sections 2-945.01 to 2-970 shall be known and may be cited as the Noxious Weed Control Act.

Source: Laws 1989, LB 49, § 1; Laws 1994, LB 76, § 450; Laws 2004, LB 869, § 1; Laws 2006, LB 1226, § 2; Laws 2007, LB701, § 3; Laws 2016, LB1038, § 1.

2-955 Notice; kinds; effect; failure to comply; powers of control authority.

(1) Notices for control of noxious weeds shall consist of two kinds: General notices, as prescribed by rules and regulations adopted and promulgated by the director, which notices shall be on a form prescribed by the director; and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act.

(a) General notice shall be published by each control authority, in one or more newspapers of general circulation throughout the area over which the control authority has jurisdiction, on or before May 1 of each year and at such other times as the director may require or the control authority may determine.

(b) Whenever any control authority finds it necessary to secure more prompt or definite control of weeds on particular land than is accomplished by the general published notice, it shall cause to be served individual notice upon the owner of record of such land at his or her last-known address, giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, and use of livestock.

Each control authority shall use one or both of the following forms for all individual notices: (i)

..... County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicated the existence of an uncontrolled noxious weed infestation on property owned by you at:

The noxious weed or weeds are The method of control recommended by the control authority is as follows:

Other appropriate control methods are acceptable if approved by the county weed control superintendent.

Because the stage of growth of the noxious weed infestation on the above-specified property warrants immediate control, if such infestation remains uncontrolled after ten days from the date specified at the bottom of this notice, the control authority may enter upon such property for the purpose of taking the appropriate weed control measures. Costs for the control activities of the control authority shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.

..... Weed Control Superintendent

Dated.....;

or (ii)

..... County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicates the existence of an uncontrolled noxious weed infestation on property owned by you at:

The noxious weed or weeds are The method of control recommended by the control authority is as follows:

Other appropriate control methods are acceptable if approved by the county weed control superintendent. If, within fifteen days from the date specified at the bottom of this notice, the noxious weed infestation on such property, as specified above, has not been brought under control, you may, upon conviction, be subject to a fine of \$100.00 per day for each day of noncompliance beginning on, up to a maximum of fifteen days of noncompliance (maximum \$1,500).

Upon request to the control authority, within fifteen days from the date specified at the bottom of this notice, you are entitled to a hearing before the

control authority to challenge the existence of a noxious weed infestation on property owned by you at

..... Weed Control Superintendent

Dated.....

In all counties having a population of four hundred thousand or more inhabitants as determined by the most recent federal decennial census, the control authority may dispense with the individual notices and may publish general notices if published in one or more newspapers of general circulation throughout the area over which such control authority has jurisdiction. Such notice shall be published weekly for four successive weeks prior to May 1 of each year or at such other times as the control authority deems necessary. In no event shall a fine be assessed against a landowner as prescribed in subdivision (3)(a) of this section unless the control authority has caused individual notice to be served upon the landowner as specified in this subdivision.

(2) At the request of any owner served with an individual notice pursuant to subdivision (1)(b)(ii) of this section, the control authority shall hold an informal public hearing to allow such landowner an opportunity to be heard on the question of the existence of an uncontrolled noxious weed infestation on such landowner's property.

(3) Whenever the owner of the land on which noxious weeds are present has neglected or failed to control them as required pursuant to the act and any notice given pursuant to subsection (1) of this section, the control authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice required by subdivision (1)(b)(ii) of this section, the owner has not taken action to control the noxious weeds on the specified property and has not requested a hearing pursuant to subsection (2) of this section, the control authority shall notify the county attorney who shall proceed against such owner as prescribed in this subdivision. A person who is responsible for an infestation of noxious weeds on particular land under his or her ownership and who refuses or fails to control the weeds on the infested area within the time designated in the notice delivered by the control authority shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of one hundred dollars per day for each day of violation up to a total of one thousand five hundred dollars for fifteen days of noncompliance; or

(b) If, within ten days from the date specified in the notice required by subdivision (1)(b)(i) of this section, the owner has not taken action to control the noxious weeds on the specified property and the stage of growth of such noxious weeds warrants immediate control to prevent spread of the infestation to neighboring property, the control authority may cause proper control methods to be used on such infested land, including necessary destruction of growing crops, and shall advise the record owner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the owner. In addition the control authority shall immediately cause notice to be filed of possible unpaid weed control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of

control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority or, if no noxious weed control fund exists, to the county general fund.

Source: Laws 1965, c. 7, § 4, p. 82; Laws 1969, c. 13, § 4, p. 158; Laws 1974, LB 694, § 1; Laws 1975, LB 14, § 5; Laws 1983, LB 154, § 1; Laws 1987, LB 1, § 3; Laws 1987, LB 138, § 6; Laws 1989, LB 49, § 7; Laws 1995, LB 589, § 1; Laws 2010, LB731, § 2; Laws 2016, LB742, § 1.

2-958.02 Grant program; applications; selection; considerations; priority; section, how construed; director; duties.

(1) From funds available in the Noxious Weed and Invasive Plant Species Assistance Fund, the director may administer a grant program to assist local control authorities and other weed management entities in the cost of implementing and maintaining noxious weed control programs and in addressing special weed control problems as provided in this section.

(2) The director shall receive applications by local control authorities and weed management entities for assistance under this subsection and, in consultation with the advisory committee created under section 2-965.01, award grants for any of the following eligible purposes:

(a) To conduct applied research to solve locally significant weed management problems;

(b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;

(c) To encourage the formation of weed management entities;

(d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;

(e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;

(f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director if the director has approved a petition to bring such weeds under the county control program;

(g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and

(h) To conduct educational activities.

(3) The director shall select and prioritize applications for assistance under subsection (2) of this section based on the following considerations:

(a) The seriousness of the noxious weed or invasive plant problem or potential problem addressed by the project;

(b) The ability of the project to provide timely intervention to save current and future costs of control and eradication;

(c) The likelihood that the project will prevent or resolve the problem or increase knowledge about resolving similar problems in the future;

(d) The extent to which the project will leverage federal funds and other nonstate funds;

(e) The extent to which the applicant has made progress in addressing noxious weed or invasive plant problems;

(f) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(g) The extent to which the project will reduce the total population or area of infestation of a noxious weed or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(h) The extent to which the project uses the principles of integrated vegetation management and sound science; and

(i) Such other factors that the director determines to be relevant.

(4) The director shall receive applications for grants under this subsection and shall award grants to recipients and programs eligible under this subsection. Priority shall be given to grant applicants whose proposed programs are consistent with vegetation management goals and priorities and plans and policies of the Riparian Vegetation Management Task Force established under section 2-970. Beginning in fiscal year 2016-17, it is the intent of the Legislature to appropriate one million dollars annually for the management of vegetation within the banks of a natural stream or within one hundred feet of the banks of a channel of any natural stream. Such funds shall only be used to pay for activities and equipment as part of vegetation management programs that have as their primary objective improving conveyance of streamflow in natural streams. Grants from funds appropriated as provided in this subsection shall be disbursed only to weed management entities, local weed control authorities, and natural resources districts whose territory includes river basins, with priority given to river basins that are the subject of an interstate compact or decree. The Game and Parks Commission shall assist grant recipients in implementing grant projects under this subsection, and interlocal agreements under the Interlocal Cooperation Act or the Joint Public Agency Act shall be utilized whenever possible in carrying out the grant projects.

(5) Nothing in this section shall be construed to relieve control authorities of their duties and responsibilities under the Noxious Weed Control Act or the duty of a person to control the spread of noxious weeds on lands owned and controlled by him or her.

(6) The Department of Agriculture may adopt and promulgate necessary rules and regulations to carry out this section.

(7) The director may annually apply for conservation funding from the Natural Resources Conservation Service of the United States Department of Agriculture.

Source: Laws 2004, LB 869, § 5; Laws 2007, LB701, § 4; Laws 2009, LB98, § 2; Laws 2016, LB1038, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

2-967 Repealed. Laws 2016, LB1038, § 19.

2-968 Repealed. Laws 2016, LB1038, § 19.

2-969 Riparian Vegetation Management Task Force; created; members.

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one surface water project representative from each river basin that has ever been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one surface water project representative from a river basin that has not been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is not designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; three representatives selected from a list of at least ten individuals nominated by the Nebraska Association of Resources Districts; two representatives selected from a list of at least five individuals nominated by the Nebraska Weed Control Association; one riparian landowner from each of the state's congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a nonvoting, ex officio member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture.

Source: Laws 2016, LB1038, § 3.

2-970 Riparian Vegetation Management Task Force; duties; meetings; report.

The Riparian Vegetation Management Task Force, in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation treatment, and develop plans and policies to achieve such goals and objectives. Any plan shall utilize the principles of integrated vegetation management and sound science. The task force shall convene within thirty days after the appointment of the members is complete to elect a chairperson and conduct such other business as deemed necessary. An annual report shall be submitted to the Governor and the Legislature by June 30 each year with the first report due on June 30, 2017. The report submitted to the Legislature shall be submitted electronically. It is the intent of the Legislature that expenses of the

task force not exceed twenty-five thousand dollars of the total appropriation to the program per fiscal year.

Source: Laws 2016, LB1038, § 4.

ARTICLE 10

PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS

(j) GRASSHOPPERS AND OTHER PESTS

Section

- 2-1066. Repealed. Laws 2017, LB274, § 6.
- 2-1067. Repealed. Laws 2017, LB274, § 6.
- 2-1068. Repealed. Laws 2017, LB274, § 6.
- 2-1069. Repealed. Laws 2017, LB274, § 6.
- 2-1070. Repealed. Laws 2017, LB274, § 6.
- 2-1071. Repealed. Laws 2017, LB274, § 6.

(k) PLANT PROTECTION AND PLANT PEST ACT

- 2-1072. Act, how cited.
- 2-1073. Public policy declaration.
- 2-1074. Definitions, where found.
- 2-1075.01. Repealed. Laws 2013, LB 68, § 23.
- 2-1075.03. Certification inspection of Nebraska-grown nursery stock, defined.
- 2-1077. Repealed. Laws 2013, LB 68, § 23.
- 2-1079.03. Grow, defined.
- 2-1080. Repealed. Laws 2013, LB 68, § 23.
- 2-1080.01. Harmonization plan, defined.
- 2-1083. Nursery stock, defined.
- 2-1083.01. Nursery stock distributor, defined.
- 2-1091. Implementation or enforcement of act; department; powers.
- 2-1091.01. Nursery stock distributor license; application; contents; fees; licensee duties; nursery stock; requirements; license; posting; lapse of license.
- 2-1091.02. Fees; department; powers.
- 2-1092. Repealed. Laws 2013, LB 68, § 23.
- 2-1093. Repealed. Laws 2013, LB 68, § 23.
- 2-1094. Repealed. Laws 2013, LB 68, § 23.
- 2-1095. Nursery stock distributors; nursery stock; certification inspection; application; distribution; restrictions; treatment or destruction of stock; department; powers.
- 2-1096. Repealed. Laws 2013, LB 68, § 23.
- 2-1097. Repealed. Laws 2013, LB 68, § 23.
- 2-1098. Repealed. Laws 2013, LB 68, § 23.
- 2-1099. Repealed. Laws 2013, LB 68, § 23.
- 2-10,100. Repealed. Laws 2013, LB 68, § 23.
- 2-10,100.01. Repealed. Laws 2013, LB 68, § 23.
- 2-10,100.02. Repealed. Laws 2013, LB 68, § 23.
- 2-10,101. Repealed. Laws 2013, LB 68, § 23.
- 2-10,102. Collectors; nursery stock distributor's license required; inspection.
- 2-10,103. Nursery stock distributor; duties.
- 2-10,103.01. Nursery stock distributor; disciplinary actions; procedures.
- 2-10,103.02. Administrative fine; collection; use.
- 2-10,103.04. Notice or order; service; notice; contents; hearings; procedure; new hearing.
- 2-10,104. Foreign distributor; reciprocity; department; reciprocal agreements.
- 2-10,105. Optional inspections; nursery stock distributor's license; optional issuance.
- 2-10,106. Importation and distribution; labeling requirements; exception; department; powers.
- 2-10,110. Implementation or enforcement agreements authorized.
- 2-10,111. Costs; liability.
- 2-10,115. Violations; penalties; appeal of department order; procedure.
- 2-10,116. Rules and regulations.

Section

2-10,116.01. Repealed. Laws 2013, LB 68, § 23.

(j) GRASSHOPPERS AND OTHER PESTS

2-1066 Repealed. Laws 2017, LB274, § 6.

2-1067 Repealed. Laws 2017, LB274, § 6.

2-1068 Repealed. Laws 2017, LB274, § 6.

2-1069 Repealed. Laws 2017, LB274, § 6.

2-1070 Repealed. Laws 2017, LB274, § 6.

2-1071 Repealed. Laws 2017, LB274, § 6.

(k) PLANT PROTECTION AND PLANT PEST ACT

2-1072 Act, how cited.

Sections 2-1072 to 2-10,117 shall be known and may be cited as the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 1; Laws 1993, LB 406, § 1; Laws 2008, LB791, § 1; Laws 2013, LB68, § 1.

2-1073 Public policy declaration.

It is hereby declared to be the public policy of the State of Nebraska and the purpose of the Plant Protection and Plant Pest Act to protect and foster the health, prosperity, and general welfare of Nebraska residents by preserving and protecting the plant industry and the agricultural interests of the state. Because of the importance of the plant industry and agricultural interests to the welfare and economy of the state and the damage which can result from the uncontrolled proliferation of plant pests, there is a need to impose standards and restrictions on the movement and care of plants and the movement, treatment, control, and eradication of plant pests within the state. The Department of Agriculture shall be charged with administering and enforcing such standards and restrictions through the act.

Source: Laws 1988, LB 874, § 2; Laws 2017, LB274, § 1.

2-1074 Definitions, where found.

For purposes of the Plant Protection and Plant Pest Act, unless the context otherwise requires, the definitions found in sections 2-1074.01 to 2-1089 shall be used.

Source: Laws 1988, LB 874, § 3; Laws 1993, LB 406, § 2; Laws 2008, LB791, § 2; Laws 2013, LB68, § 2.

2-1075.01 Repealed. Laws 2013, LB 68, § 23.**2-1075.03 Certification inspection of Nebraska-grown nursery stock, defined.**

Certification inspection of Nebraska-grown nursery stock shall mean an inspection performed pursuant to section 2-1095.

Source: Laws 2013, LB68, § 3.

2-1077 Repealed. Laws 2013, LB 68, § 23.**2-1079.03 Grow, defined.**

Grow shall mean to produce a plant or plant product, by propagation or cultivation, including, but not limited to, division, transplant, seed, or cutting, generally over a period of one year or greater. Grow does not include transferring nursery stock from one container to another or potting bare-root nursery stock, if the stock will be distributed within twelve months.

Source: Laws 2013, LB68, § 4.

2-1080 Repealed. Laws 2013, LB 68, § 23.**2-1080.01 Harmonization plan, defined.**

Harmonization plan shall mean any agreement between states, or a state or states and the federal government, designed to limit the spread of a plant pest into or out of a designated area.

Source: Laws 2013, LB68, § 5.

2-1083 Nursery stock, defined.

Nursery stock shall mean all botanically classified hardy perennial or biennial plants, trees, shrubs, and vines, either domesticated or wild, cuttings, grafts, scions, buds, bulbs, rhizomes, or roots thereof, and such plants and plant parts for, or capable of, propagation, excluding plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, potatoes, or seeds of any such plant.

Source: Laws 1988, LB 874, § 12; Laws 2013, LB68, § 6.

2-1083.01 Nursery stock distributor, defined.

Nursery stock distributor shall mean any person involved in:

- (1) The acquisition and further distribution of nursery stock;
 - (2) The utilization of nursery stock for landscaping or purchase of nursery stock for other persons;
 - (3) The distribution of nursery stock with a mechanical digger, commonly known as a tree spade, or by other means;
 - (4) The solicitation of or taking orders for sales of nursery stock in the state;
- or
- (5) The growing and distribution of nursery stock or active involvement in the management or supervision of a nursery.

Source: Laws 2013, LB68, § 7.

2-1091 Implementation or enforcement of act; department; powers.

For the purpose of implementation or enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

- (1) Enter at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, held prior to distribution, or distributed for the purpose of inspecting all plants, structures, vehicles, equipment, packing materials, containers, records, and labels on such property or other-

wise implementing or enforcing the act. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;

(2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;

(3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;

(4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subsection (3) of section 2-1095 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements, including harmonization plans, with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue European corn borer quarantine certificates, phytosanitary certificates, and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country or issue quarantine compliance agreements or European corn borer quarantine certification licenses;

(11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Until increased or decreased by rules or regulations, assess and collect fees set forth in section 2-1091.02 for inspections, services, or work performed in carrying out subdivisions (8) and (10) through (12) of this section. Inspection

time shall include the driving to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection. Any fee charged to the department relating to such subdivisions shall be paid by the person requesting the inspection, services, or work. The department may, for purposes of administering such subdivisions, establish in rules and regulations inspection requirements, standards, and issuance, renewal, or revocation of licenses, certificates, or agreements necessitated by such subdivisions;

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;

(15) Implement programs or plans to eradicate, manage, treat, or control plant pests;

(16) Issue, place on probation, suspend, or revoke licenses issued or agreements entered into pursuant to the act or deny applications for such licenses or agreements pursuant to the act; and

(17) Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

Source: Laws 1988, LB 874, § 20; Laws 1993, LB 406, § 11; Laws 2013, LB68, § 8; Laws 2017, LB274, § 2.

2-1091.01 Nursery stock distributor license; application; contents; fees; licensee duties; nursery stock; requirements; license; posting; lapse of license.

(1) A person shall not operate as a nursery stock distributor without a valid license issued by the department. Any person validly licensed as a grower, a dealer, or a broker under the Plant Protection and Plant Pest Act as it existed on the day before September 6, 2013, shall remain validly licensed until December 31, 2013.

(2) Each nursery stock distributor shall apply for a license required by subsection (1) of this section on forms furnished by the department due on January 1 for the current license year. Such application shall include the full name and mailing address of the applicant, the names and addresses of any partners, limited liability company members, or corporate officers, the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Plant Protection and Plant Pest Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location of the operation, and the signature of the applicant. A person distributing greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall not be required to obtain a license but may do so pursuant to section 2-10,105.

(3) A nursery stock distributor license shall expire on December 31 of each year unless previously lapsed or revoked.

(4) All applications shall be accompanied by a license fee for the first acre on which nursery stock is located. If the nursery stock distributor does not have physical possession of nursery stock, the nursery stock distributor shall pay a license fee based on one acre. Additionally the applicant shall pay an acreage fee for each additional acre on which nursery stock is located. The license fees are set forth in section 2-1091.02. If the applicant has distributed nursery stock

prior to applying for a license, the applicant shall pay an additional administrative fee as set forth in section 2-1091.02.

(5) All nursery stock distributed by a nursery stock distributor shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which maintain its vigor as provided in the rules and regulations. Any fee charged to the department for diagnostic services or shipping costs shall be paid by the nursery stock distributor.

(6) A valid copy of the nursery stock distributor's license shall be posted in a conspicuous place at the distribution location.

(7) A nursery stock distributor shall obtain a license for each distribution location.

(8) Each applicant for a nursery stock distributor license shall furnish a signed written statement that such person will acquire and distribute only nursery stock which has been distributed by a person who is duly licensed pursuant to the act or approved by an authorizing agency within the state of origin recognized by the department.

(9) Every nursery stock distributor shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is received.

(10) Each nursery stock distributor shall keep and make available for examination by the department for a period of three years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety and place of origin of the nursery stock received and all documents accompanying each shipment indicating compliance with state or federal requirements and quarantines.

(11) A nursery stock distributor license shall lapse automatically upon a change of ownership, and the subsequent owner must obtain a new license. The nursery stock distributor license shall lapse automatically upon a change of location, and such licensee must obtain a new license. A licensee shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A nursery stock distributor shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When a nursery stock distributor permanently ceases operating, he or she shall return the license to the department.

Source: Laws 1993, LB 406, § 12; Laws 1994, LB 884, § 3; Laws 2013, LB68, § 9.

2-1091.02 Fees; department; powers.

(1) License fees for the Plant Protection and Plant Pest Act due on January 1, 2014, shall be the amount in column A of subsection (3) of this section.

(2) The license fees due January 1, 2015, and each January 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower such fees each year to meet the criteria in this subsection, but the fee shall not be greater than the amount in column B of subsection (3) of this section. The same percentage shall be applied to each category for all fee

increases or decreases. The director shall use the fees in column A of subsection (3) of this section as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(a) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Plant Protection and Plant Pest Act; and

(b) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act.

(3) License Fees.

License Fees	A	B
Nursery stock distributor license as set forth in section 2-1091.01 for the first acre	\$115	\$140
Fee for additional acres	\$5.00 per acre	\$6.00 per acre
Distributing without obtaining a nursery stock distributor license fee	25% of the fee per month up to 100% of the license fee	

(4) Other fees for the Plant Protection and Plant Pest Act under subsection (5) of this section in effect on January 1, 2014, shall be the amount in column A of such subsection. The department may increase or decrease such fees by rules or regulations adopted and promulgated by the department. Such increases shall not result in fees greater than the amount in column B of subsection (5) of this section.

(5) Other Fees.

Other Fees	A	B
Certification fee for nursery stock growing acres as set forth in section 2-1095	Included in license fee	
Late applications for certification of nursery stock growing acres	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
Reinspections or requested inspections for nursery stock	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
Phytosanitary or export certificates set forth in section 2-1091	\$30 per certificate and \$7 for taking an application by telephone	\$40 per certificate and \$10 for taking an application by telephone
Phytosanitary or export certificate inspections and reinspections	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
European corn borer quarantine certification license set forth in	\$50 per license,	\$65 per license,

section 2-1091	annually	annually
European corn borer certificate	\$6.25 for packet of 25	\$10.00 for packet of 25
Quarantine compliance agreements as set forth in section 2-1091	\$50 per agreement annually	\$65 per agreement annually
Quarantine compliance agreement inspections and reinspections	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile

(6) Any fee remaining unpaid for more than one month shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Plant Protection and Plant Pest Cash Fund.

Source: Laws 2013, LB68, § 11.

2-1092 Repealed. Laws 2013, LB 68, § 23.

2-1093 Repealed. Laws 2013, LB 68, § 23.

2-1094 Repealed. Laws 2013, LB 68, § 23.

2-1095 Nursery stock distributors; nursery stock; certification inspection; application; distribution; restrictions; treatment or destruction of stock; department; powers.

(1) All nursery stock distributors that distribute any nursery stock that they grow shall apply for an additional inspection for the certification of the Nebraska-grown nursery stock as provided in this section. The nursery stock distributor shall apply for such certification inspection of the Nebraska-grown nursery stock as part of the application for the nursery stock distributor license described in section 2-1091.01.

(2)(a) Applications for certification inspection of Nebraska-grown nursery stock that are due on January 1 pursuant to section 2-1091.01 and are not received prior to February 1 and initial applications not received prior to beginning of distribution shall be considered delinquent. Such applications shall have an inspection fee as set forth in section 2-1091.02.

(b) Inspection time shall include the driving time to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection.

(3) Each nursery stock distributor shall post signs delineating sections of all growing areas. A section shall be not larger than five acres.

(4) All growing areas within the state shall be inspected by the department at least once per year for certification and compliance with the Plant Protection and Plant Pest Act.

(5) Following the certification inspection of Nebraska-grown nursery stock, the department shall provide a copy of the plant inspection report to the

nursery stock distributor specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the department shall require the nursery stock distributor to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the nursery stock distributor's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use fees as outlined in subsection (2) of this section. The nursery stock distributor shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(6) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(7) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each nursery stock distributor shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-from-distribution orders. The department may withhold a license or certification of Nebraska-grown nursery stock until conditions have been met by the nursery stock distributor as specified in the plant inspection report or any other order issued by the department. A certification of Nebraska-grown stock may be issued covering portions of the nursery which are not infested or infected if the nursery stock distributor agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

Source: Laws 1988, LB 874, § 24; Laws 1993, LB 406, § 15; Laws 2013, LB68, § 10.

2-1096 Repealed. Laws 2013, LB 68, § 23.

2-1097 Repealed. Laws 2013, LB 68, § 23.

2-1098 Repealed. Laws 2013, LB 68, § 23.

2-1099 Repealed. Laws 2013, LB 68, § 23.

2-10,100 Repealed. Laws 2013, LB 68, § 23.

2-10,100.01 Repealed. Laws 2013, LB 68, § 23.

2-10,100.02 Repealed. Laws 2013, LB 68, § 23.

2-10,101 Repealed. Laws 2013, LB 68, § 23.

2-10,102 Collectors; nursery stock distributor's license required; inspection.

Collectors shall be required to obtain a nursery stock distributor's license and shall be required to apply for an additional inspection for the certification of the collected nursery stock as provided in section 2-1095. All collected nursery stock shall be labeled as such.

Source: Laws 1988, LB 874, § 31; Laws 2013, LB68, § 12.

2-10,103 Nursery stock distributor; duties.

A nursery stock distributor shall:

(1) Comply with the Plant Protection and Plant Pest Act and the rules and regulations:

(a) In the care of nursery stock;

(b) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;

(c) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order;

(d) In maintaining the nursery stock in a manner accessible to the department; and

(e) In the payment of license fees;

(2) Comply with any order of the director issued pursuant to the act;

(3) Not distribute nursery stock obtained from an unlicensed nursery stock distributor;

(4) Not allow the license to be used by any person other than the person to whom it was issued; and

(5) Not interfere with the department in the performance of its duties.

Source: Laws 1988, LB 874, § 32; Laws 1993, LB 406, § 22; Laws 2013, LB68, § 13.

2-10,103.01 Nursery stock distributor; disciplinary actions; procedures.

(1) A nursery stock distributor may be placed on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to section 2-10,103.02 after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and

(c) The director finds that issuing the specified order is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(2) A nursery stock distributor may be suspended after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(3) A license may be immediately suspended and the director may order the nursery stock distributor's operation to cease prior to hearing when:

(a) The director determines an immediate danger to the public health, safety, or welfare exists; and

(b) The nursery stock distributor receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the nursery stock distributor may request in writing a date for a hearing and the director shall consider the interests of the nursery stock distributor when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a nursery stock distributor does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the nursery stock distributor of the date and time of such hearing.

(4) A license may be revoked after:

(a) The director determines the nursery stock distributor has committed serious, repeated, or multiple violations of any of the requirements of section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the nursery stock distributor.

(5) Any nursery stock distributor whose license has been suspended shall cease operations until the license is reinstated. Any nursery stock distributor whose license is revoked shall cease operating until a new license is issued.

(6) The director may terminate a proceeding to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section at any time if the reasons for such proceeding no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a nursery stock distributor may no longer be subject to the director's order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(7) Proceedings to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section shall not preclude the department from pursuing other civil or criminal actions.

Source: Laws 1993, LB 406, § 23; Laws 2013, LB68, § 14.

2-10,103.02 Administrative fine; collection; use.

(1) The director may issue an order imposing an administrative fine on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the Plant Protection and Plant Pest Act or rules and regulations adopted and promulgated pursuant to the act in an amount which shall not exceed one thousand dollars for each violation. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or such rules and regulations. In determining whether to impose an administrative fine and, if a fine is imposed, the amount of the fine, the director shall take into consideration (a) the seriousness of the violation, (b) the extent to which the person derived financial

gain as a result of his or her failure to comply, (c) the extent of intent, willfulness, or negligence by the person in the violation, (d) the likelihood of the violation reoccurring, (e) the history of the person's failure to comply, (f) the person's attempts to prevent or limit his or her failure to comply, (g) the person's willingness to correct violations, (h) the nature of the person's disclosure of violations, (i) the person's cooperation with investigations of his or her failure to comply, and (j) any factors which may be established by the rules and regulations.

(2) The department shall remit administrative fines collected under the act to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) Any administrative fine imposed under the Plant Protection and Plant Pest Act and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The lien shall attach to the real estate of the violator when notice of such lien is filed and indexed against the real estate in the office of the register of deeds or county clerk in the county where the real estate is located.

Source: Laws 1993, LB 406, § 24; Laws 2013, LB68, § 15.

2-10,103.04 Notice or order; service; notice; contents; hearings; procedure; new hearing.

(1) Any notice or order provided for in the Plant Protection and Plant Pest Act shall be personally served on the person holding the nursery stock distributor license, the person named in the notice, or the person authorized by the person holding the nursery stock distributor license to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the person holding the nursery stock distributor license, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the person holding the nursery stock distributor license or the person named in the notice is charged.

(3) A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing provided for in the act shall set forth the time and place of the hearing except as otherwise provided in subsection (3) of section 2-10,103.01. A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to such hearing shall include notice that the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing may be waived pursuant to subsection (5) of this section. A notice of such right to a hearing shall include notice of the potential actions that may be taken against the person holding the nursery stock distributor license or the person named in the notice.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the

director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) The person holding the nursery stock distributor license or the person named in the notice shall be deemed to waive the right to a hearing if such person does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the person shows the director that the person had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the person holding the nursery stock distributor license or the person named in the notice waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 1993, LB 406, § 26; Laws 2013, LB68, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,104 Foreign distributor; reciprocity; department; reciprocal agreements.

(1) Any person residing outside the state and desiring to solicit orders or distribute nursery stock in Nebraska may do so if:

(a) Such person is duly licensed under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Nebraska as determined by the department; and

(b) Such person complies with the Plant Protection and Plant Pest Act and the rules and regulations on all nursery stock distributed in Nebraska.

(2) The department may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states shall not prevent the department from prohibiting the distribution in Nebraska of nursery stock which fails to meet the minimum criteria for nursery stock of Nebraska-licensed nursery stock distributors.

Source: Laws 1988, LB 874, § 33; Laws 2013, LB68, § 17.

2-10,105 Optional inspections; nursery stock distributor's license; optional issuance.

(1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subsection (2) of section 2-1095 shall be charged for such an inspection.

(2) Any person who desires a nursery stock distributor's license for any greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to the same requirements that apply to the inspection of nursery stock as set forth in section 2-1095. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If a reinspection trip is required, the applicant shall be assessed a reinspection fee as outlined in subsection (2) of section 2-1095.

Source: Laws 1988, LB 874, § 34; Laws 1993, LB 406, § 27; Laws 2013, LB68, § 18.

2-10,106 Importation and distribution; labeling requirements; exception; department; powers.

(1) It shall be unlawful for any person, including any carrier transporting nursery stock, to bring into or cause to be brought into Nebraska any nursery stock unless such shipment is plainly and legibly marked with a label showing the name and address of the consignor and consignee, the nature and quantity of the contents, the place of origin, and the license or its equivalent issued by the recognized authorizing agency stating that the nursery from which the nursery stock originates has been inspected.

(2) It shall be unlawful for any person to distribute in Nebraska nursery stock for the purpose of resale in Nebraska without meeting the labeling criteria stated in this section.

(3) The requirements of this section shall not apply to nursery stock distributed to the final consumer at a distribution location where a valid nursery stock distributor's license has been conspicuously posted.

(4) The department may cause to be held for inspection any plants, regardless of proper labeling according to the Plant Protection and Plant Pest Act, if there is reason to believe they are infested or infected with plant pests. Such plants shall be held only for a period of time reasonable for proper inspection and any treatment deemed necessary by the department. The department shall not be held responsible for costs incurred by treatment or delay.

(5) In carrying out this section, the department may intercept or detain any person or property including vehicles or vessels reasonably believed to be carrying any plants or any other articles capable of carrying plant pests. The department may hold for treatment, destroy, or otherwise dispose of any plants, if found infested or infected with plant pests, at the owner's cost.

Source: Laws 1988, LB 874, § 35; Laws 2013, LB68, § 19.

2-10,110 Implementation or enforcement agreements authorized.

The department may receive grants-in-aid or receive and disperse pass-through funds or otherwise cooperate and enter into agreements with the United States Department of Agriculture or any other person in the depart-

ment's implementation or enforcement of the Plant Protection and Plant Pest Act or federal programs related to plant protection or plant pests in the state.

Source: Laws 1988, LB 874, § 39; Laws 2017, LB274, § 3.

2-10,111 Costs; liability.

(1) All costs associated with treating, seizing, or destroying any plant or issuing and enforcing any withdrawal-from-distribution order for any plant, which plant is in violation of the Plant Protection and Plant Pest Act or the rules and regulations adopted and promulgated pursuant to the act, shall be the responsibility of the person in possession of the plant. The department shall be reimbursed by the person in possession of the plant for the actual cost incurred by the department in enforcing the act or such rules and regulations.

(2) All costs related to enforcement of the act and such rules and regulations shall be the responsibility of the person violating the act. The department shall be reimbursed by persons violating the act or such rules and regulations for the actual cost incurred by the department in enforcing the act.

(3) The department shall not be liable for any costs incurred by any person due to any departmental actions relating to the enforcement of the act or such rules and regulations.

Source: Laws 1988, LB 874, § 40; Laws 2013, LB68, § 20.

2-10,115 Violations; penalties; appeal of department order; procedure.

(1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature and in violation of the Plant Protection and Plant Pest Act if that person:

(a) Distributes nursery stock without a nursery stock distributor license issued under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 2-10,107 to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) Acts as a nursery stock distributor and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued;

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a nursery stock distributor; or

(iv) Fails to pay all fees required by the act and the rules and regulations;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 2-10,106;

(j) Distributes biological control agents or genetically engineered plant organisms without a permit if a permit is required by the act;

(k) Fails to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act;

(l) Violates any order of the director after such order has become final or upon termination of any review proceeding when the order has been sustained by a court of law; or

(m) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act, the rules and regulations, or both shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act, the rules and regulations, or both and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such plants or for permission to treat or relabel the plants to bring such plants into compliance with the act, the rules and regulations, or both.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of a violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, subdivision (6) of section 2-1091, or subsection (3) of section 2-10,103.02 or any combination thereof.

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1988, LB 874, § 44; Laws 1993, LB 406, § 29; Laws 2013, LB68, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,116 Rules and regulations.

The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;

(2) The assessment and collection of license, inspection, reinspection, and delinquent fees;

(3) The withdrawal from distribution of nursery stock;

- (4) The care, viability, and standards for nursery stock;
- (5) The labeling and shipment of nursery stock;
- (6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;
- (7) The establishment of a restricted plant pest list;
- (8) The preparation, maintenance, handling, and filing of reports by persons subject to the act;
- (9) The adoption of the American Association of Nurserymen’s American Standard for Nursery Stock insofar as it does not conflict with any provision of the act;
- (10) Factors to be considered when the director issues an order imposing an administrative fine;
- (11) The planting of certified seed potatoes in the state; and
- (12) The implementation of programs or plans involving the movement, treatment, control, and eradication of plant pests in the state.

Source: Laws 1988, LB 874, § 45; Laws 1993, LB 406, § 31; Laws 2008, LB791, § 4; Laws 2017, LB274, § 4.

2-10,116.01 Repealed. Laws 2013, LB 68, § 23.

**ARTICLE 12
HORSERACING**

Section	
2-1203.	Commission; powers; fines; board of stewards; powers; appeal; fine.
2-1203.01.	State Racing Commission; duties.
2-1207.	Horsereading; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under nineteen years of age prohibited; penalty.
2-1208.	Race meetings; tax; fees.
2-1216.	Parimutuel wagering legalized; fees paid, how construed.
2-1221.	Accepting anything of value to be wagered, transmitted, or delivered for wager; delivering off-track wagers; prohibited; penalty.
2-1222.	Racing Commission’s Cash Fund; created; receipts; use; investment.
2-1230.	Repealed. Laws 2014, LB 656, § 9.
2-1231.	Repealed. Laws 2014, LB 656, § 9.
2-1232.	Repealed. Laws 2014, LB 656, § 9.
2-1233.	Repealed. Laws 2014, LB 656, § 9.
2-1234.	Repealed. Laws 2014, LB 656, § 9.
2-1235.	Repealed. Laws 2014, LB 656, § 9.
2-1236.	Repealed. Laws 2014, LB 656, § 9.
2-1237.	Repealed. Laws 2014, LB 656, § 9.
2-1238.	Repealed. Laws 2014, LB 656, § 9.
2-1239.	Repealed. Laws 2014, LB 656, § 9.
2-1240.	Repealed. Laws 2014, LB 656, § 9.
2-1241.	Repealed. Laws 2014, LB 656, § 9.
2-1242.	Repealed. Laws 2014, LB 656, § 9.

2-1203 Commission; powers; fines; board of stewards; powers; appeal; fine.

The State Racing Commission shall have power to prescribe and enforce rules and regulations governing horseraces and race meetings licensed as provided in sections 2-1201 to 2-1229. Such rules and regulations shall contain criteria to be used by the commission for decisions on approving and revoking track licenses and setting racing dates.

The commission may revoke or suspend licenses issued to racing industry participants and may, in lieu of or in addition to such suspension or revocation, impose a fine in an amount not to exceed five thousand dollars upon a finding that a rule or regulation has been violated by a licensed racing industry participant. The exact amount of the fine shall be proportional to the seriousness of the violation and the extent to which the licensee derived financial gain as a result of the violation.

The commission may delegate to a board of stewards such of the commission's powers and duties as may be necessary to carry out and effectuate the purposes of sections 2-1201 to 2-1229.

Any decision or action of such board of stewards may be appealed to the commission or may be reviewed by the commission on its own initiative. The board of stewards may impose a fine not to exceed fifteen hundred dollars upon a finding that a rule or regulation has been violated.

The commission shall remit administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1935, c. 173, § 3, p. 630; C.S.Supp.,1941, § 2-1503; R.S. 1943, § 2-1203; Laws 1975, LB 582, § 1; Laws 1980, LB 939, § 3; Laws 1991, LB 200, § 1; Laws 1992, LB 718, § 1; Laws 1994, LB 1153, § 1; Laws 2001, LB 295, § 2; Laws 2003, LB 243, § 1; Laws 2005, LB 573, § 1; Laws 2014, LB656, § 1.

2-1203.01 State Racing Commission; duties.

The State Racing Commission shall:

(1) Enforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203;

(2) License racing industry participants, race officials, mutuel employees, concessionaires, and such other persons as deemed necessary by the commission if the license applicants meet eligibility standards established by the commission;

(3) Prescribe and enforce security provisions, including, but not limited to, the restricted access to areas within track enclosures and backstretch areas, and prohibitions against misconduct or corrupt practices;

(4) Determine or cause to be determined by chemical testing and analysis of body fluids whether or not any prohibited substance has been administered to the winning horse of each race and any other horse selected by the board of stewards;

(5) Verify the certification of horses registered as being Nebraska-bred under section 2-1213; and

(6) Collect and verify the amount of revenue received by the commission under section 2-1208.

Source: Laws 1980, LB 939, § 2; Laws 1989, LB 591, § 1; Laws 1992, LB 718, § 2; Laws 2014, LB656, § 2.

2-1207 Horseracing; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under nineteen years of age prohibited; penalty.

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner. As each race is run, at the option of the licensee, the licensee may deduct from the total sum wagered on all horses as first winners not less than fifteen percent or more than eighteen percent from such total sum, plus the odd cents of the redistribution over the next lower multiple of ten. At the option of the licensee, the licensee may deduct up to and including twenty-five percent from the total sum wagered by exotic wagers as defined in section 2-1208.03. The State Racing Commission may authorize other levels of deduction on wagers conducted by means of interstate simulcasting. The licensee shall notify the commission in writing of the percentages the licensee intends to deduct during the live race meet conducted by the licensee and shall notify the commission at least one week in advance of any changes to such percentages the licensee intends to make. The licensee shall also deduct from the total sum wagered by exotic wagers, if any, the tax plus the odd cents of the redistribution over the next multiple of ten as provided in subsection (1) of section 2-1208.04. The balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first. The licensee may likewise receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be as specified with respect to wagers upon horses selected to run first.

(2) At all race meets held pursuant to this section, the licensee shall deduct from the total sum wagered one-third of the amount over fifteen percent deducted pursuant to subsection (1) of this section on wagers on horses selected to run first, second, or third and one percent of all exotic wagers to be used to promote agriculture and horse breeding in Nebraska and for the support and preservation of horseracing pursuant to section 2-1207.01.

(3) No person under nineteen years of age shall be permitted to make any parimutuel wager, and there shall be no wagering except under the parimutuel method outlined in this section. Any person, association, or corporation who knowingly aids or abets a person under nineteen years of age in making a parimutuel wager shall be guilty of a Class IV misdemeanor.

Source: Laws 1935, c. 173, § 7, p. 631; C.S.Supp.,1941, § 2-1507; R.S. 1943, § 2-1207; Laws 1959, c. 5, § 1, p. 71; Laws 1963, c. 6, § 1,

p. 66; Laws 1965, c. 9, § 1, p. 123; Laws 1973, LB 76, § 1; Laws 1976, LB 519, § 5; Laws 1977, LB 40, § 12; Laws 1982, LB 631, § 1; Laws 1983, LB 365, § 1; Laws 1986, LB 1041, § 4; Laws 1987, LB 708, § 5; Laws 1989, LB 591, § 2; Laws 1990, LB 1055, § 1; Laws 1992, LB 718, § 3; Laws 1993, LB 471, § 1; Laws 1994, LB 1153, § 3; Laws 2005, LB 573, § 2; Laws 2014, LB656, § 3.

2-1208 Race meetings; tax; fees.

For all race meetings, every corporation or association licensed under the provisions of sections 2-1201 to 2-1218 shall pay the tax imposed by section 2-1208.01 and shall also pay to the State Racing Commission the sum of sixty-four one hundredths of one percent of the gross sum wagered by the parimutuel method at each licensed racetrack enclosure during the calendar year. For race meetings devoted principally to running live races, the licensee shall pay to the commission the sum of fifty dollars for each live racing day that the licensee serves as the host track for intrastate simulcasting and twenty-five dollars for any other live racing day.

No other license tax, permit tax, occupation tax, or excise tax or racing fee, except as provided in this section and in sections 2-1203 and 2-1208.01, shall be levied, assessed, or collected from any such licensee by the state or by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect any such tax or fee.

Source: Laws 1935, c. 173, § 8, p. 632; C.S.Supp.,1941, § 2-1508; R.S. 1943, § 2-1208; Laws 1959, c. 5, § 2, p. 72; Laws 1980, LB 939, § 4; Laws 1992, LB 718, § 4; Laws 1994, LB 1153, § 4; Laws 1999, LB 127, § 1; Laws 2005, LB 573, § 3; Laws 2014, LB656, § 4.

2-1216 Parimutuel wagering legalized; fees paid, how construed.

The parimutuel system of wagering on the results of horseraces, when conducted within the racetrack enclosure at licensed horserace meetings, shall not under any circumstances be held or construed to be unlawful, any other statutes of the State of Nebraska to the contrary notwithstanding. The money inuring to the State Racing Commission under sections 2-1201 to 2-1218 from permit fees or from other sources shall never be considered as license money. It is the intention of the Legislature that the funds arising under such sections be construed as general revenue to be appropriated and allocated exclusively for the specific purposes set forth in such sections.

Source: Laws 1935, c. 173, § 20, p. 637; C.S.Supp.,1941, § 2-1516; R.S.1943, § 2-1216; Laws 1992, LB 718, § 5; Laws 2014, LB656, § 5.

2-1221 Accepting anything of value to be wagered, transmitted, or delivered for wager; delivering off-track wagers; prohibited; penalty.

Except as provided in section 2-1207, whoever directly or indirectly accepts anything of value to be wagered or to be transmitted or delivered for wager in any parimutuel system of wagering on horseraces or delivers anything of value which has been received outside of the enclosure of a racetrack holding a race meet licensed under sections 2-1201 to 2-1247 to be placed as wagers in the

parimutuel pool within such enclosure shall be guilty of a Class II misdemeanor.

Source: Laws 1977, LB 273, § 1; Laws 1978, LB 748, § 1; Laws 1984, LB 915, § 1; Laws 1987, LB 1, § 10; Laws 1992, LB 718, § 6; Laws 2014, LB656, § 6.

2-1222 Racing Commission's Cash Fund; created; receipts; use; investment.

There is hereby created the Racing Commission's Cash Fund from which shall be appropriated such amounts as are available therefrom and as shall be considered incident to the administration of the State Racing Commission's office. The fund shall contain all license fees and gross receipt taxes collected by the commission as provided under sections 2-1203, 2-1203.01, and 2-1208 but shall not include taxes collected pursuant to section 2-1208.01, and such fees and taxes collected shall be remitted to the State Treasurer for credit to the Racing Commission's Cash Fund. Money in the fund may be transferred to the General Fund at the direction of the Legislature. The State Treasurer shall transfer one hundred fifty thousand dollars from the fund to the General Fund on or before June 15, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. Any money in the Racing Commission's 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 1980, LB 939, § 6; Laws 1992, LB 718, § 7; Laws 1994, LB 1066, § 4; Laws 2014, LB656, § 7; Laws 2017, LB331, § 16.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-1230 Repealed. Laws 2014, LB 656, § 9.

2-1231 Repealed. Laws 2014, LB 656, § 9.

2-1232 Repealed. Laws 2014, LB 656, § 9.

2-1233 Repealed. Laws 2014, LB 656, § 9.

2-1234 Repealed. Laws 2014, LB 656, § 9.

2-1235 Repealed. Laws 2014, LB 656, § 9.

2-1236 Repealed. Laws 2014, LB 656, § 9.

2-1237 Repealed. Laws 2014, LB 656, § 9.

2-1238 Repealed. Laws 2014, LB 656, § 9.

2-1239 Repealed. Laws 2014, LB 656, § 9.

2-1240 Repealed. Laws 2014, LB 656, § 9.

2-1241 Repealed. Laws 2014, LB 656, § 9.

2-1242 Repealed. Laws 2014, LB 656, § 9.**ARTICLE 15****NEBRASKA NATURAL RESOURCES COMMISSION****(a) GENERAL PROVISIONS**

Section

- 2-1501. Terms, defined.
- 2-1504. Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.
- 2-1506. Water Sustainability Fund; goals; legislative findings.
- 2-1507. Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.
- 2-1508. Commission; rank and score applications for funding; criteria.
- 2-1509. Application; form; contents; director; duties; state participation; request.
- 2-1510. Program, project, or activity; funding request; director; powers; findings; conflict of interest.
- 2-1511. Director; recommendations; agreement; contents; loan; repayment period; successor; contract; lien; filing.
- 2-1512. Department; powers; Water Sustainability Fund; use.
- 2-1513. Water Sustainability Fund; legislative analysis.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

- 2-1587. Nebraska Resources Development Fund; created; reserve fund; administration; investment.
- 2-1588. Fund; allocation; report; projects; costs.
- 2-1592. Grant or loan; application; deadline; procedure.

(e) WATER PLANNING AND REVIEW PROCESS

- 2-15,106. Annual report; contents.

(a) GENERAL PROVISIONS**2-1501 Terms, defined.**

As used in sections 2-1501 to 2-15,123, unless the context otherwise requires:

- (1) Commission means the Nebraska Natural Resources Commission;
- (2) State means the State of Nebraska;
- (3) Agency of this state means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;
- (4) United States or agencies of the United States means the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;
- (5) Government or governmental means the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them;
- (6) Lands, easements, and rights-of-way means lands and rights or interests in lands whereon channel improvements, channel rectifications, or water-retarding or gully-stabilization structures are located, including those areas for flooding and flowage purposes, spoil areas, borrow pits, access roads, and similar purposes;
- (7) Local organization means any natural resources district, drainage district, irrigation district, or other public district, county, city, or state agency;

(8) Subwatershed means a portion of a watershed project as divided by the department on a complete hydrologic unit;

(9) Rechanneling means the channeling of water from one watercourse to another watercourse by means of open ditches;

(10) Watercourse means any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well-defined banks and, upon order of the commission, also includes any particular depression which would not otherwise be within the definition of watercourse;

(11) Director means the Director of Natural Resources;

(12) Department means the Department of Natural Resources; and

(13) Combined sewer overflow project means a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality.

Source: Laws 1937, c. 8, § 3, p. 93; C.S.Supp.,1941, § 2-1903; R.S.1943, § 2-1503; Laws 1951, c. 7, § 1, p. 73; Laws 1959, c. 6, § 2, p. 75; Laws 1961, c. 4, § 1, p. 65; Laws 1961, c. 3, § 2, p. 62; Laws 1963, c. 8, § 2, p. 73; Laws 1963, c. 9, § 1, p. 76; Laws 1969, c. 16, § 1, p. 164; Laws 1969, c. 9, § 66, p. 138; Laws 1971, LB 415, § 1; Laws 1972, LB 542, § 1; Laws 1977, LB 510, § 1; Laws 1984, LB 1106, § 11; Laws 1999, LB 403, § 1; R.S.Supp.,1999, § 2-1503; Laws 2000, LB 900, § 17; Laws 2014, LB1098, § 1.

2-1504 Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.

(1) The Nebraska Natural Resources Commission is established. The commission shall advise the department as requested by the director and shall perform such other functions as are specifically conferred on the commission by law. The commission shall have no jurisdiction over matters pertaining to water rights.

(2) The voting members of the commission, all of whom shall have attained the age of majority, shall be:

(a) One resident of each of the following river basins, with delineations being those on the Nebraska river basin map officially adopted by the commission and on file with the department: (i) The Niobrara River, White River, and Hat Creek basin, (ii) the North Platte River basin, (iii) the South Platte River basin, (iv) the middle Platte River basin, (v) the lower Platte River basin, (vi) the Loup River basin, (vii) the Elkhorn River basin, (viii) the Missouri tributaries basin, (ix) the Republican River basin, (x) the Little Blue River basin, (xi) the Big Blue River basin, and (xii) the Nemaha River basin;

(b) One additional resident of each river basin which encompasses one or more cities of the metropolitan class; and

(c) Fourteen members appointed by the Governor, subject to confirmation by the Legislature. Of the members appointed by the Governor, one shall represent each of the following categories: Agribusiness interests; agricultural interests; ground water irrigators; irrigation districts; manufacturing interests; metropolitan utilities districts; municipal users of water from a city of the primary class; municipal users of water from a city of the first or second class or a village; outdoor recreation users; public power districts; public power and irrigation

districts; range livestock owners; surface water irrigators; and wildlife conservation interests.

(3) Members of the commission described in subdivision (2)(a) of this section shall be selected for four-year terms at individual caucuses of the natural resources district directors residing in the river basin from which the member is selected. Such caucuses shall be held for each basin within ten days following the first Thursday after the first Tuesday of the year the term of office of the member from that basin expires. The dates and locations for such caucuses shall be established by the commission, and the commission shall provide notice to the public by issuing press releases for publication in a newspaper of general circulation in each county that comprises the river basin for which a caucus election will be held. Terms of office of such members shall follow the sequence originally determined by the river basin representatives to the commission at their first meeting on the third Thursday after the first Tuesday in January 1975. All river basin members shall take office on the third Thursday after the first Tuesday in January following their selection and any vacancy shall be filled for the unexpired term by a caucus held within thirty days following the date such vacancy is created. Each member of the commission representing a river basin shall qualify by filing with the other members of the commission an acceptance in writing of his or her selection.

(4) Members of the commission described in subdivision (2)(b) of this section shall be residents of natural resources districts which encompass one or more cities of the metropolitan class and shall be selected in the same manner, at the same time, and for a four-year term having the same term sequence as provided for the other members from such basin under subsection (3) of this section.

(5) For members of the commission described in subdivision (2)(c) of this section:

(a) The Governor shall appoint the eleven additional members added by Laws 2014, LB1098, within thirty days after April 17, 2014. The eleven additional appointments shall be for staggered four-year terms, as determined by the Governor. The Governor shall also set the terms of the current members of the commission appointed under such subdivision and serving on April 17, 2014, to staggered four-year terms. Future appointments shall be for four-year terms. Members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Members may be removed for cause. Initial appointees shall begin serving immediately following notice of appointment, except that the member appointed representing municipal users of water from the class of city or a village that is being represented by the current member representing municipal users of water and the members representing surface water irrigators and ground water irrigators shall not begin serving until the term of the current member representative of the category expires or such member resigns or is otherwise removed; and

(b) In appointing such members, the Governor shall:

(i) Create a broad-based commission which has knowledge of, has experience with, and is representative of Nebraska's water use and economy;

(ii) Give recognition to the importance of both water quantity and water quality; and

(iii) Appoint members who represent diverse geographic regions of the state, including urban and rural areas, and represent, to the extent possible, the racial and ethnic diversity of the state.

(6) After the members have been appointed as required under this section, the commission shall revise or adopt and promulgate rules and regulations as necessary to administer the Water Sustainability Fund pursuant to sections 2-1506 to 2-1513.

Source: Laws 1937, c. 8, § 4, p. 94; C.S.Supp., 1941, § 2-1904; R.S. 1943, § 2-1504; Laws 1951, c. 7, § 2, p. 74; Laws 1957, c. 3, § 2, p. 82; Laws 1959, c. 6, § 3, p. 76; Laws 1961, c. 4, § 2, p. 66; Laws 1963, c. 9, § 2, p. 78; Laws 1967, c. 7, § 1, p. 78; Laws 1967, c. 5, § 1, p. 73; Laws 1969, c. 9, § 67, p. 140; Laws 1972, LB 542, § 2; Laws 1973, LB 337, § 1; Laws 1977, LB 510, § 2; Laws 1980, LB 423, § 1; Laws 1983, LB 36, § 1; Laws 1983, LB 37, § 1; Laws 1984, LB 1106, § 13; Laws 2000, LB 900, § 22; Laws 2014, LB1098, § 2.

Cross References

Department of Natural Resources, powers, see Chapter 61, article 2.

2-1506 Water Sustainability Fund; goals; legislative findings.

(1) The goals of the Water Sustainability Fund are to: (a) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow; (b) remediate or mitigate threats to drinking water; (c) promote the goals and objectives of approved integrated management plans or ground water management plans; (d) contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources; (e) assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project; (f) provide increased water productivity and enhance water quality; (g) use the most cost-effective solutions available; and (h) comply with interstate compacts, decrees, other state contracts and agreements and federal law.

(2) The Legislature finds that the goals of the Water Sustainability Fund can be met by equally considering programs, projects, or activities in the following categories: (a) Research, data, and modeling; (b) rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance or flood prevention for protection of critical infrastructure; (c) conjunctive management, storage, and integrated management of ground water and surface water; and (d) compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

Source: Laws 2014, LB1098, § 3.

2-1507 Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(1) It is the intent of the Legislature that the Water Sustainability Fund be equitably distributed statewide to the greatest extent possible for the long term

and give priority funding status to projects which are the result of federal mandates.

(2) Distributions to assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project shall be based on a demonstration of need and shall equal ten percent of the total annual appropriation to the Water Sustainability Fund if (a) applicants have applied for such funding as required under section 2-1509 and (b) any such application has been recommended for further consideration by the director and is subsequently approved for allocation by the commission pursuant to subsection (1) of section 2-1511. If more than one municipality demonstrates a need for funds pursuant to this subsection, funds shall be distributed proportionally based on population.

(3) Any money in the Water Sustainability Fund may be allocated by the commission to applicants in accordance with sections 2-1506 to 2-1513. Such money may be allocated in the form of grants or loans for water sustainability programs, projects, or activities undertaken within the state. The allocation of funds to a program, project, or activity in one form shall not of itself preclude additional allocations in the same or any other form to the same program, project, or activity.

(4) When the commission has approved an allocation of funds to a program, project, or activity, the Department of Natural Resources shall establish a subaccount in the Water Sustainability Fund and credit the entire amount of the allocation to the subaccount. Individual subaccounts shall be established for each program, project, or activity approved by the commission. The commission may approve a partial allocation to a program, project, or activity based upon available unallocated funds in the Water Sustainability Fund, but the amount of unfunded allocations shall not exceed eleven million dollars. Additional allocations to a program, project, or activity shall be credited to the same subaccount as the original allocation. Subaccounts shall not be subject to transfer out of the Water Sustainability Fund, except that the commission may authorize the transfer of excess or unused funds from a subaccount and into the unreserved balance of the fund.

(5) A natural resources district is eligible for funding from the Water Sustainability Fund only if the district has adopted or is currently participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.

(6) The commission shall utilize the resources and expertise of and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board, and the Game and Parks Commission on funding and planning for water programs, projects, or activities.

(7) A biennial report shall be made to the Clerk of the Legislature describing the work accomplished by the use of funds towards the goals of the Water Sustainability Fund beginning on December 31, 2015. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB1098, § 4; Laws 2015, LB661, § 21; Laws 2016, LB957, § 1.

2-1508 Commission; rank and score applications for funding; criteria.

The commission shall rank and score applications for funding based on criteria that demonstrate the extent to which a program, project, or activity:

- (1) Remediates or mitigates threats to drinking water;
- (2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;
- (3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;
- (4) Contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;
- (5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;
- (6) Is cost-effective;
- (7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts or agreements or federal law;
- (8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;
- (9) Improves water quality;
- (10) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;
- (11) Has a local jurisdiction with plans in place that support sustainable water use;
- (12) Addresses a statewide problem or issue;
- (13) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;
- (14) Contributes to watershed health and function; and
- (15) Uses objectives described in the annual report and plan of work for the state water planning and review process issued by the department.

Source: Laws 2014, LB1098, § 5.

2-1509 Application; form; contents; director; duties; state participation; request.

(1) Applicants for funds may file an application with the department for a grant or loan from the Water Sustainability Fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program, project, or activity;

(b) Set forth or be accompanied by a plan for development of the proposed program, project, or activity, together with engineering, economic, and finan-

cial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program, project, or activity costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the program, project, or activity and related lands and has or may acquire all water rights necessary for the proposed program, project, or activity;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program, project, or activity; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program, project, or activity.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program, project, or activity and the proposed schedule for development and completion of such program, project, or activity, determine eligibility for funding, and make appropriate recommendations to the commission pursuant to sections 2-1506 to 2-1513. As a part of his or her investigation, the director shall consider whether the plan for development of the program, project, or activity is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Water Sustainability Fund for state participation in any water and related land-water resources projects shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 2014, LB1098, § 6.

2-1510 Program, project, or activity; funding request; director; powers; findings; conflict of interest.

(1) Each program, project, or activity for which funding is requested, whether such request has as its origin an application or the action of the department itself, shall be reviewed as provided in sections 2-1506 to 2-1513 by the director prior to the approval of any allocation for such program, project, or activity by the commission.

(2) The director may recommend approval of and the commission may approve grants or loans, including the appropriate repayment period and the rate of interest, for program, project, or activity costs or acquisition of interests in programs, projects, or activities if after investigation and evaluation the director finds that:

(a) The plan does not conflict with any existing Nebraska state land plan;

(b) The proposed program, project, or activity is economically and financially feasible based upon standards adopted by the commission pursuant to sections 2-1506 to 2-1513;

(c) The plan for development of the proposed program, project, or activity is satisfactory;

(d) The plan of development minimizes any adverse impacts on the natural environment;

(e) The applicant is qualified, responsible, and legally capable of carrying out the program, project, or activity;

(f) In the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the program, project, or activity;

(g) The plan considers other plans and programs of the state and resources development plans of the political subdivisions of the state; and

(h) The money required from the Water Sustainability Fund is available.

(3) The director and staff of the department shall carry out their powers and duties under sections 2-1506 to 2-1513 independently of and without prejudice to their powers and duties under other provisions of law.

(4) No member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The director may be delegated additional responsibilities consistent with the purposes of sections 2-1506 to 2-1513. It shall be the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs, projects, or activities under section 2-1508.

Source: Laws 2014, LB1098, § 7.

2-1511 Director; recommendations; agreement; contents; loan; repayment period; successor; contract; lien; filing.

(1) The director shall make recommendations based upon his or her review of the criteria set forth in section 2-1510 of whether an application should be considered further or rejected and the form of allocation he or she deems appropriate. The commission shall act in accordance with such recommendations according to the application procedures adopted and promulgated in rules and regulations.

(2) If, after review of the recommendation by the director, the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to sections 2-1506 to 2-1513 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the department shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program, project, or activity to which funds shall be applied. The department shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of an interest in any qualified program, project, or activity when such acquisition is initiated by the department itself pursuant to section 2-1512. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant or loan or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to

be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

(3) If the allocation to be approved is a loan, the department and the applicant or applicants shall include in the agreement provisions for repayment to the Water Sustainability Fund of money loaned together with any interest at reasonable rates as established by the commission. The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after construction of the project or implementation of the program or activity is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of and security for repayment of the loan as shall be considered necessary by the department.

(4) With the express approval of the commission, an applicant may convey its interest in a program, project, or activity to a successor. The department shall contract with the qualified successor in interest of the original obligor for repayment of the loan together with any interest thereon and for succession to its rights and obligations in any contract with the department.

(5) The state shall have a lien upon a program, project, or activity constructed, improved, or renovated with money from the Water Sustainability Fund for the amount of the loan together with any interest thereon. This lien shall attach to all program, project, or activity facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the program, project, or activity. The department shall file a statement of the lien, its amount, terms, and a description of the program, project, or activity with the register of deeds of each county in which the program, project, or activity or any part thereof is located. The register of deeds shall record the lien, and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same program, project, or activity.

Source: Laws 2014, LB1098, § 8.

2-1512 Department; powers; Water Sustainability Fund; use.

In order to develop Nebraska's water resources, the department, using the process provided for in subsection (4) of section 2-1509, and with the approval of the commission, may acquire interests in water and related land resources projects in the name of the state utilizing the Water Sustainability Fund. Such use of the fund shall be made when the public benefits obtained from the projects or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the department and the commission that such acquisition is appropriate under sections 2-1506 to 2-1513. The department, with the approval of the commission, may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such water resource projects

may include, but not be limited to, the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals, the department may contract with the federal government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Source: Laws 2014, LB1098, § 9.

2-1513 Water Sustainability Fund; legislative analysis.

The Appropriations Committee of the Legislature shall, beginning with the FY2023-25 biennial budget review process, conduct a biennial analysis of the financial status of the Water Sustainability Fund, including a review of the committed and uncommitted balance of the fund and the financial impact of pending programs, projects, or activities. The committee shall base its recommendation for transfers to the Water Sustainability Fund upon information provided in the review process.

Source: Laws 2014, LB1098, § 10; Laws 2015, LB661, § 22.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1587 Nebraska Resources Development Fund; created; reserve fund; administration; investment.

(1) There is hereby created the Nebraska Resources Development Fund to be administered by the department. The State Treasurer shall credit to the fund, to carry out sections 2-1586 to 2-1595, such money as is (a) appropriated to or transferred into the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency. The money in the fund shall not be subject to any fiscal year or biennium limitation requiring reappropriation of the unexpended balance at the end of the fiscal year or biennium. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) To aid in the funding of projects and to prevent excessive fluctuations in appropriation requirements for the Nebraska Resources Development Fund, the department shall create a reserve fund to be used only for projects requiring total expenditures from the Nebraska Resources Development Fund in excess of five million dollars. Unless disapproved by the Governor, the department may credit to such reserve fund that portion of any appropriation to the Nebraska Resources Development Fund which exceeds five million dollars. The department may also credit to the reserve fund such other funds as it determines are available.

(3) Any money in the Nebraska Resources Development 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 1974, LB 975, § 2; R.S.1943, (1977), § 2-3264; Laws 1984, LB 985, § 1; Laws 1986, LB 258, § 5; Laws 1995, LB 7, § 8; Laws 2000, LB 900, § 32; Laws 2009, First Spec. Sess., LB3, § 4; Laws 2015, LB661, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-1588 Fund; allocation; report; projects; costs.

(1) No money in the Nebraska Resources Development Fund may be reallocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board, or commission, or by any political subdivision of the state which has the authority to develop the state's water and related land resources after March 30, 2014. The commission may commit appropriated funds to projects approved as of March 30, 2014, not to exceed amounts specifically allocated to such projects prior to March 30, 2014, unless specific appropriations or transfers to exceed the March 30, 2014, allocation amounts are approved by the Legislature. If such specific appropriations or transfers are made, the commission shall develop procedures to allocate the additional funding to projects approved as of March 30, 2014. Allocations shall not exceed funds appropriated for such purpose. Any of such funds remaining after all such project costs have been completely funded shall be transferred to the Water Sustainability Fund by the State Treasurer. Prior to March 30, 2014, the Nebraska Resources Development Fund may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be allocated to assist natural resources districts in the preparation of management plans as provided in section 46-709. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1 of each year after 1993, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in a readily available construction cost index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include a complete financial statement. Each member of the Legislature shall receive an electronic copy of such report upon making a request to the director.

Source: Laws 1974, LB 975, § 3; Laws 1979, LB 322, § 3; Laws 1981, LB 545, § 2; R.S.Supp., 1982, § 2-3265; Laws 1984, LB 1106, § 17; Laws 1985, LB 102, § 2; Laws 1993, LB 155, § 1; Laws 1996, LB 108, § 2; Laws 1998, LB 656, § 5; Laws 2000, LB 900, § 33; Laws 2001, LB 129, § 1; Laws 2004, LB 962, § 2; Laws 2006, LB 1226, § 3; Laws 2009, LB 179, § 1; Laws 2012, LB 782, § 3; Laws 2014, LB 906, § 9; Laws 2015, LB 661, § 24.

2-1592 Grant or loan; application; deadline; procedure.

(1) Any organization qualified to apply for and receive funds from the Nebraska Resources Development Fund may file an application with the department for a grant or loan from such fund. Applications for grants to the

department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission. No applications may be made to receive funds by grant or loan from the Nebraska Resources Development Fund after March 30, 2014.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program or project;

(b) Set forth or be accompanied by a plan for development of the proposed program or project, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program or project costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands and has or may acquire all water rights necessary for the proposed project;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program or project; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program or project.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program or project and the proposed schedule for development and completion of such program or project, determine the eligibility of the program or project for funding, and make appropriate recommendations to the commission pursuant to sections 2-1586 to 2-1595. As a part of his or her investigation, the director shall consider whether the plan for development of the program or project is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Nebraska Resources Development Fund for state participation in any water and related land-water resources projects through acquisition of a state interest therein shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 1974, LB 975, § 7; R.S.1943, (1977), § 2-3269; Laws 1984, LB 1106, § 18; Laws 2000, LB 900, § 36; Laws 2014, LB906, § 10.

(e) WATER PLANNING AND REVIEW PROCESS

2-15,106 Annual report; contents.

On or before September 15 for each odd-numbered year and on or before the date provided in subsection (1) of section 81-132 for each even-numbered year,

the director shall submit an annual report and plan of work for the state water planning and review process to the Legislature and Governor. The report submitted to the Legislature shall be submitted electronically. The report shall include a listing of expenditures for the past fiscal year, a summary and analysis of work completed in the past fiscal year, funding requirements for the next fiscal year, and a projection and analysis of work to be completed and estimated funding requirements for such work for the next succeeding four years. The explanation of future funding requirements shall include an explanation of the proposed use of such funds and the anticipated results of the expenditure of such funds. The report shall, to the extent possible, identify such information as it affects each agency or other recipient of program funds. The explanation of future funding requirements shall be in a form suitable for providing an explanation of that portion of the budget request pertaining to the state water planning and review process.

Source: Laws 1981, LB 326, § 8; R.S.Supp.,1982, § 2-3289; Laws 1984, LB 1106, § 42; Laws 2000, LB 900, § 47; Laws 2002, Second Spec. Sess., LB 12, § 1; Laws 2012, LB782, § 4; Laws 2016, LB1092, § 1.

**ARTICLE 18
POTATO DEVELOPMENT**

PART I

Section

- 2-1807. Potato shipper; annual statement; excise tax; amount; administrative fee; violations; penalty.
- 2-1808. Nebraska Potato Development Fund; creation; disbursement; investment.

PART I

2-1807 Potato shipper; annual statement; excise tax; amount; administrative fee; violations; penalty.

(1) Beginning July 1, 1997, every potato shipper shall render and have on file with the Department of Agriculture by the last day of July an annual statement under oath, on forms prescribed by the department, which shall set forth the number of pounds of potatoes grown in Nebraska which were sold or shipped by him or her during the preceding fiscal year beginning on July 1 and ending on June 30. For every potato shipper who was required to file an annual statement for calendar year 1996, a short period statement covering January 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. For every potato shipper who was required to file a quarterly statement for the period of January 1, 1997, through March 31, 1997, a final quarterly statement covering April 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. At the time the sworn statement is filed and in connection therewith, each such potato shipper shall pay and remit to the department an excise tax of not to exceed two cents per one hundred pounds upon the potatoes shown in such statement to have been sold, which tax is hereby levied and imposed. The tax shall be set in the manner prescribed in subsection (3) of this section. The department shall transmit to the State Treasurer all money, checks, drafts, or other mediums of exchange thus received. The department shall have authority to adjust all errors in making payment. Any such potato shipper who shall

neglect or refuse to file such statement, or to pay the tax herein imposed, within the time prescribed, shall be guilty of a Class IV misdemeanor. No potatoes shall be subject to tax more than once under the Nebraska Potato Development Act.

(2) All excise taxes imposed by this section are delinquent on August 1 of the year due. The department shall impose an additional administrative fee of five percent per month of the excise taxes for each month or portion thereof such taxes are delinquent not to exceed one hundred percent of such taxes. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting the excise taxes. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Nebraska Potato Development Fund.

(3) The department shall, upon the recommendation of the committee, have the power to set the excise tax prescribed in subsection (1) of this section. The tax shall be one cent per one hundred pounds from July 19, 1980, until adjusted by the department. Adjusted rates shall be effective for periods of not less than one year. The applicable rate of the excise tax shall be prescribed in rules and regulations adopted by the department in the manner prescribed by law.

Source: Laws 1945, c. 4, § 7, p. 72; Laws 1947, c. 4, § 3, p. 61; Laws 1951, c. 9, § 2, p. 80; Laws 1963, c. 12, § 1, p. 90; Laws 1969, c. 20, § 2, p. 186; Laws 1977, LB 40, § 17; Laws 1980, LB 833, § 1; Laws 1997, LB 202, § 1; Laws 2016, LB909, § 1.

2-1808 Nebraska Potato Development Fund; creation; disbursement; investment.

The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Potato Development Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Potato Development Act and its enforcement, all taxes and fees collected by the Department of Agriculture. After appropriation, the Director of Administrative Services, upon receipt of proper vouchers approved by the director of the department, shall issue his or her warrants on such funds and the State Treasurer shall pay the same out of the money credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1945, c. 4, § 8, p. 72; Laws 1969, c. 584, § 29, p. 2359; Laws 1995, LB 7, § 10; Laws 2016, LB909, § 2.

Cross References

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

**ARTICLE 26
 PESTICIDES**

Section
 2-2624. Terms, defined.
 2-2626. Department; powers and duties.
 2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process.

Section	
2-2634.	Registration and renewal fees; late registration fee.
2-2635.	Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process.
2-2636.	Pesticide applicators; restrictions; department; duties; reciprocity.
2-2638.	Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.
2-2639.	Noncommercial applicator license; application; denial, when; resident agent for service of process.
2-2641.	Private applicator; qualifications; application for license; requirements; fee.
2-2642.	Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.
2-2646.	Prohibited acts.
2-2646.01.	Pesticide business; owner or operator; liability.
2-2656.	Nebraska aerial pesticide business license; application; form; contents; fee; resident agent.

2-2624 Terms, defined.

For purposes of the Pesticide Act:

(1) Active ingredient means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator means the Administrator of the United States Environmental Protection Agency;

(3) Adulterated means:

(a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(14) Director means the Director of Agriculture or his or her designee;

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on January 1, 2013;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a

pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to 7 U.S.C. 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under 7 U.S.C. 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under 7 U.S.C. 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or 7 U.S.C. 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient

statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nematelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal entity or state agency or a political subdivision of the state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of

substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on January 1, 2013, that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), as the section existed on January 1, 2013, bearing or containing a new animal drug;

(33) Pesticide management plan means a management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the federal act has been granted;

(39) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(40) State pesticide plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(41) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides by the department pursuant to a pesticide management plan;

(42) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a public health pesticide shall also weigh any risks of the use of the pesticide against the health risks to be mitigated or controlled by the use of the pesticide;

(43) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

(44) Weed means any plant that grows where not wanted.

Source: Laws 1993, LB 267, § 32; Laws 1993, LB 588, § 3; Laws 1994, LB 884, § 7; Laws 2002, LB 436, § 3; Laws 2003, LB 157, § 1; Laws 2006, LB 874, § 2; Laws 2013, LB69, § 1.

2-2626 Department; powers and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2013. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury

to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under 7 U.S.C. 136i-1 of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2013; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under 7 U.S.C. 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars for each violation on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take reasonable measures to assess and collect all fees and fines prescribed by the act and the rules or regulations adopted under the act;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the

work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17; Laws 2010, LB254, § 7; Laws 2013, LB69, § 2.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5; Laws 2009, LB100, § 1; Laws 2013, LB69, § 3.

2-2634 Registration and renewal fees; late registration fee.

(1) As a condition to registration or renewal of registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of one hundred sixty dollars for each pesticide to be registered, except that the fee may be increased or decreased by rules and regulations adopted and promulgated pursuant to the Pesticide Act. In no event shall such fee exceed two hundred ten dollars for each pesticide to be registered.

(2) All fees collected under subsection (1) of this section shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of such fee to the Noxious Weed Cash Fund as provided in section 2-958;

(b) Sixty dollars of such fee to the Buffer Strip Incentive Fund as provided in section 2-5106;

(c) Fifty-five dollars of such fee to the Natural Resources Water Quality Fund; and

(d) The remainder of such fee to the Pesticide Administrative Cash Fund.

(3) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee. The purpose of the late registration fee is to cover the administrative costs associated with collecting fees, and all money collected as a late registration fee shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

Source: Laws 1993, LB 588, § 13; Laws 1998, LB 1126, § 12; Laws 2001, LB 329, § 4; Laws 2006, LB 874, § 6; Laws 2013, LB69, § 4.

2-2635 Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process.

(1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute

them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program; or

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to:

(a) A licensed pesticide dealer;

(b) A licensed certified applicator issued a license with the appropriate category for using the restricted-use pesticide being distributed;

(c) An applicator issued a license by another state with the appropriate category for using the restricted-use pesticide being distributed;

(d) A noncertified applicator authorized by the Pesticide Act to apply restricted-use pesticides if the licensed certified applicator supervising the noncertified applicator is issued a license with the appropriate category for using the restricted-use pesticide being distributed; or

(e) Any other person if the pesticide dealer maintains records set out in rules and regulations adopted and promulgated pursuant to the act requiring the person to verify in writing that:

(i) The restricted-use pesticide will be delivered to an applicator described in subdivision (3)(b), (c), or (d) of this section; and

(ii) The applicator receiving the restricted-use pesticide acknowledges and agrees to the distribution.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of twenty-five dollars. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person

applying for such license. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm, partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued. The purpose of the additional fee is to cover the administrative costs associated with collecting fees.

An application for a duplicate pesticide dealer's license shall be accompanied by a nonrefundable application fee of ten dollars.

All fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three years and shall provide the department access to examine such records and a copy of any record on request.

Source: Laws 1993, LB 267, § 34; Laws 1993, LB 588, § 14; Laws 1994, LB 884, § 8; Laws 1997, LB 752, § 54; Laws 2001, LB 329, § 5; Laws 2002, LB 436, § 8; Laws 2013, LB69, § 5.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on January 1, 2013, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license

certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7; Laws 2009, LB100, § 2; Laws 2013, LB69, § 6.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8; Laws 2009, LB100, § 3; Laws 2013, LB69, § 7.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a

resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9; Laws 2009, LB100, § 4; Laws 2013, LB69, § 8.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's date of birth.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10; Laws 2009, LB100, § 5; Laws 2013, LB69, § 9.

2-2642 Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.

(1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the license fee required by section 2-2638 for commercial applicator licenses or section 2-2639 for non-commercial applicator licenses, if any; and

(b)(i) Undertaking the training approved by the department; or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) The application for renewal of a private applicator license shall be the same as the application for an initial license.

(5) Notwithstanding sections 2-2636 to 2-2642, any individual required to be a licensed certified applicator may use pesticides as a noncertified applicator for only one consecutive sixty-day period of time if:

(a) The individual or his or her employer applies to the department for a license as a licensed certified applicator within ten days of making the first pesticide use. Such license application shall include the name and license number of the licensed certified applicator who is supervising the noncertified applicator;

(b) All pesticide uses made by an individual as a noncertified applicator are made under the direct supervision of a licensed certified applicator; and

(c) The licensed certified applicator provides such training and supervision as is necessary to:

(i) Determine the level of experience and knowledge of the noncertified applicator in the use of a pesticide;

(ii) Provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision;

(iii) Accompany the noncertified applicator to at least one site which would be typical of each type of pesticide use that the noncertified applicator performs;

(iv) Be accessible by voice or electronic means to provide further instructions at all times during the noncertified applicator's use of the pesticide; and

(v) Be able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time as established by the director by rules and regulations. Both the licensed certified applicator and noncertified applicator shall be responsible for the acts of the noncertified applicator and each shall be subject to all fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a licensed certified applicator or uses any pesticide in violation of the act.

Source: Laws 1993, LB 588, § 21; Laws 2002, LB 436, § 16; Laws 2013, LB69, § 10.

2-2646 Prohibited acts.

It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with 7 U.S.C. 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to obtain a license or to pay all fees and fines as prescribed by an order of the director, the act, and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act;

(20) To alter or falsify all or part of a license issued by the department; and

(21) To violate any other provision of the act.

Source: Laws 1993, LB 588, § 25; Laws 2002, LB 436, § 24; Laws 2003, LB 157, § 2; Laws 2006, LB 874, § 12; Laws 2009, LB100, § 7; Laws 2010, LB254, § 8; Laws 2013, LB69, § 11.

Cross References

Environmental Protection Act, see section 81-1532.

2-2646.01 Pesticide business; owner or operator; liability.

Any person who owns or operates a business that uses pesticides on the property of another person for hire or compensation shall be responsible for the acts or omissions of anyone using a pesticide for such business. Such person shall be subject to the same fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act as the applicator.

Source: Laws 2002, LB 436, § 12; Laws 2013, LB69, § 12.

2-2656 Nebraska aerial pesticide business license; application; form; contents; fee; resident agent.

(1) An application for an initial or renewal Nebraska aerial pesticide business license shall be submitted to the department prior to the commencement of aerial spraying operations, and an application for renewal of a Nebraska aerial pesticide business license shall be submitted to the department before commencement of application of pesticides. The application shall be accompanied by an annual license fee of one hundred dollars. The license fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee, except that the fee shall not exceed one hundred fifty dollars. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund. The application shall be on a form prescribed by the department and shall include the following:

(a) The full name and permanent mailing address of the person applying for such license. If such applicant is an individual, the application shall include the applicant's personal mailing address. If such applicant is not an individual, the full name of each partner or member or the full name of the principal officers shall be given on the application;

(b) The location of the applicant's principal departure location and any additional departure locations utilized for aerial spraying operations to be conducted within Nebraska identified by one of the following: Global Positioning System coordinates, legal description, local address of the site, or airport identifier;

(c) A copy of the applicant's agricultural aircraft operator certificate issued pursuant to 14 C.F.R. part 137 or evidence the applicant holds such a certificate issued by the Federal Aviation Administration;

(d) The aircraft registration number issued by the Federal Aviation Administration pursuant to 14 C.F.R. part 47 of all aircraft owned, rented, or leased by the applicant to be utilized for aerial pesticide applications and all other aircraft utilized in aerial spraying operations conducted by the applicant;

(e) The Nebraska commercial applicator certificate number and current Federal Aviation Administration commercial pilot certificate number of all

persons operating aircraft for the aerial application of pesticides during any aerial spraying operations conducted by the applicant; and

(f) Such other information as deemed necessary by the director to determine the suitability of the applicant for licensure as an aerial pesticide business.

(2) An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 2010, LB254, § 3; Laws 2013, LB69, § 13.

**ARTICLE 32
NATURAL RESOURCES**

- Section
- 2-3204. Budget.
- 2-3225. Districts; tax; levies; limitation; use; collection.
- 2-3226.05. River-flow enhancement bonds; costs and expenses of qualified projects; occupation tax authorized; exemption; collection; accounting; lien; foreclosure.
- 2-3226.06. Repealed. Laws 2014, LB 906, § 23.
- 2-3226.07. Repealed. Laws 2014, LB 906, § 23.
- 2-3226.08. Repealed. Laws 2014, LB 906, § 23.
- 2-3226.09. Repealed. Laws 2014, LB 906, § 23.
- 2-3228. Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.

2-3204 Budget.

A natural resources district may adopt either an annual or a biennial budget pursuant to the Nebraska Budget Act.

Source: Laws 2015, LB164, § 1.

Cross References

Nebraska Budget Act, see section 13-501.

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. 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; Laws 2014, LB906, § 11.

Cross References

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

2-3226.05 River-flow enhancement bonds; costs and expenses of qualified projects; occupation tax authorized; exemption; collection; accounting; lien; foreclosure.

(1) A district with an integrated management plan as described in subsection (1) of section 2-3226.01 may levy an occupation tax upon the activity of irrigation of agricultural lands within such district on an annual basis, not to exceed ten dollars per irrigated acre, the proceeds of which may be used for (a) repaying principal and interest on any bonds or refunding bonds issued pursuant to section 2-3226.01 for one or more projects under section 2-3226.04 or (b) payment of all or any part of the costs and expenses of one or more qualified projects described in section 2-3226.04. If such district has more than one river basin as described in section 2-1504 within its jurisdiction, such

district shall confine such occupation tax authorized in this section to the geographic area affected by an integrated management plan adopted in accordance with section 46-715.

(2)(a) Acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless on or before June 1 in each calendar year the record owner certifies to the district the nonirrigation status of such acres for the same calendar year.

(b) A district may exempt from the occupation tax acres that are enrolled in local, state, or federal temporary irrigation retirement programs that prohibit the application of irrigation water in the year for which the tax is levied.

(c) Except as provided in subdivisions (2)(a) and (b) of this section, a district is prohibited from providing an exemption from, or allowing a request for a local refund of, an occupation tax on irrigated acres regardless of the irrigation source while the record owner maintains irrigated status on such acres in the year for which the tax is levied.

(3) Any such occupation tax shall remain in effect so long as the natural resources district has bonds outstanding which have been issued stating such occupation tax as an available source for payment and for the purpose of paying all or any part of the costs and expenses of one or more projects authorized pursuant to section 2-3226.04.

(4) Such occupation taxes shall be certified to, collected by, and accounted for by the county treasurer at the same time and in the same manner as general real estate taxes, and such occupation taxes shall be and remain a perpetual lien against such real estate until paid. Such occupation taxes shall become delinquent at the same time and in the same manner as general real property taxes. The county treasurer shall publish and post a list of delinquent occupation taxes with the list of real property subject to sale for delinquent property taxes provided for in section 77-1804. In addition, the list shall be provided to natural resources districts which levied the delinquent occupation taxes. The list shall include the record owner's name, the parcel identification number, and the amount of delinquent occupation tax. For services rendered in the collection of the occupation tax, the county treasurer shall receive the fee provided for collection of general natural resources district money under section 33-114.

(5) Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such occupation taxes have become delinquent and the real property on which the irrigation took place has not been offered at any tax sale, the district may proceed in district court in the county in which the real estate is situated to foreclose in its own name the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917 shall govern when applicable.

Source: Laws 2007, LB701, § 10; Laws 2008, LB1094, § 3; Laws 2010, LB862, § 2; Laws 2012, LB1125, § 1; Laws 2014, LB906, § 12; Laws 2014, LB1098, § 11.

2-3226.06 Repealed. Laws 2014, LB 906, § 23.

2-3226.07 Repealed. Laws 2014, LB 906, § 23.

2-3226.08 Repealed. Laws 2014, LB 906, § 23.

2-3226.09 Repealed. Laws 2014, LB 906, § 23.**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) Beginning December 31, 1998, through December 31, 2017:

(a) 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; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the association shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the association does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the association. All costs of the audit shall be paid by the association. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

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; Laws 2014, LB759, § 2; Laws 2017, LB415, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

ARTICLE 35 GRADED EGGS

Section

- 2-3501. Repealed. Laws 2017, LB134, § 15.
- 2-3502. Repealed. Laws 2017, LB134, § 15.
- 2-3503. Repealed. Laws 2017, LB134, § 15.
- 2-3504. Repealed. Laws 2017, LB134, § 15.
- 2-3505. Repealed. Laws 2017, LB134, § 15.

Section

- 2-3506. Repealed. Laws 2017, LB134, § 15.
- 2-3507. Repealed. Laws 2017, LB134, § 15.
- 2-3508. Repealed. Laws 2017, LB134, § 15.
- 2-3509. Repealed. Laws 2017, LB134, § 15.
- 2-3510. Repealed. Laws 2017, LB134, § 15.
- 2-3511. Repealed. Laws 2017, LB134, § 15.
- 2-3512. Repealed. Laws 2017, LB134, § 15.
- 2-3513. Repealed. Laws 2017, LB134, § 15.
- 2-3514. Repealed. Laws 2017, LB134, § 15.
- 2-3515. Repealed. Laws 2017, LB134, § 15.
- 2-3516. Repealed. Laws 2017, LB134, § 15.
- 2-3518. Repealed. Laws 2017, LB134, § 15.
- 2-3519. Repealed. Laws 2017, LB134, § 15.
- 2-3520. Repealed. Laws 2017, LB134, § 15.
- 2-3521. Repealed. Laws 2017, LB134, § 15.
- 2-3522. Repealed. Laws 2017, LB134, § 15.
- 2-3523. Repealed. Laws 2017, LB134, § 15.
- 2-3524. Repealed. Laws 2017, LB134, § 15.
- 2-3525. Repealed. Laws 2017, LB134, § 15.
- 2-3526. Graded Egg Fund; transfer.

2-3501 Repealed. Laws 2017, LB134, § 15.

2-3502 Repealed. Laws 2017, LB134, § 15.

2-3503 Repealed. Laws 2017, LB134, § 15.

2-3504 Repealed. Laws 2017, LB134, § 15.

2-3505 Repealed. Laws 2017, LB134, § 15.

2-3506 Repealed. Laws 2017, LB134, § 15.

2-3507 Repealed. Laws 2017, LB134, § 15.

2-3508 Repealed. Laws 2017, LB134, § 15.

2-3509 Repealed. Laws 2017, LB134, § 15.

2-3510 Repealed. Laws 2017, LB134, § 15.

2-3511 Repealed. Laws 2017, LB134, § 15.

2-3512 Repealed. Laws 2017, LB134, § 15.

2-3513 Repealed. Laws 2017, LB134, § 15.

2-3514 Repealed. Laws 2017, LB134, § 15.

2-3515 Repealed. Laws 2017, LB134, § 15.

2-3516 Repealed. Laws 2017, LB134, § 15.

2-3518 Repealed. Laws 2017, LB134, § 15.

2-3519 Repealed. Laws 2017, LB134, § 15.

2-3520 Repealed. Laws 2017, LB134, § 15.

2-3521 Repealed. Laws 2017, LB134, § 15.

2-3522 Repealed. Laws 2017, LB134, § 15.

2-3523 Repealed. Laws 2017, LB134, § 15.

2-3524 Repealed. Laws 2017, LB134, § 15.

2-3525 Repealed. Laws 2017, LB134, § 15.

2-3526 Graded Egg Fund; transfer.

The State Treasurer shall transfer any money in the Graded Egg Fund to the Pure Food Cash Fund on August 24, 2017.

Source: Laws 2017, LB134, § 13.

**ARTICLE 37
DRY BEAN RESOURCES**

Section

2-3753. Commission; powers and duties.

2-3755. Dry beans; fee; adjustment; payment.

2-3760. Repealed. Laws 2015, LB 242, § 6.

2-3762. Commission; annual report; contents.

2-3763. Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

2-3753 Commission; powers and duties.

The commission shall have the following powers and duties:

(1) To adopt and devise a dry bean program consisting of research, education, advertising, publicity, and promotion to increase total consumption of dry beans on a state, national, and international basis;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the dry bean program;

(3) To adopt and promulgate reasonable rules and regulations necessary to carry out the dry bean program;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the dry bean program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the dry bean program;

(6) To establish a means whereby the grower and processor of dry beans has the opportunity at least annually to offer his or her ideas and suggestions relative to commission policy for the coming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond such persons as may be necessary in order to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to examination by any grower or processor participant during normal business hours;

(10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than fifteen

percent of its annual budget to influence federal legislation. The purpose of such expenditures for federal lobbying activity shall be limited to activity supporting the underlying objectives of the dry bean program relating to market development, education, and research;

(11) To establish an administrative office at such place in the state as may be suitable for the proper discharge of the functions of the commission; and

(12) To adopt and promulgate rules and regulations to carry out the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 19; Laws 2015, LB242, § 1.

2-3755 Dry beans; fee; adjustment; payment.

(1) Beginning August 1, 1987, there shall be paid to the commission a fee of six cents per hundredweight upon all dry beans grown in the state during 1987 and thereafter and sold through commercial channels. Beginning January 1, 1989, until July 31, 2015, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the Dry Bean Resources Act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed ten cents per hundredweight.

(2) Beginning August 1, 2015, the fee imposed by this section shall be fifteen cents per hundredweight. Beginning January 1, 2017, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed twenty-four cents per hundredweight.

(3) Two-thirds of the fee levied under this section shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. No dry beans shall be subject to the fee more than once.

Source: Laws 1987, LB 145, § 21; Laws 2015, LB242, § 2.

2-3760 Repealed. Laws 2015, LB 242, § 6.

2-3762 Commission; annual report; contents.

(1) The commission shall prepare and make available an annual report at least thirty days prior to January 1 of each year which shall set forth in detail the income received from the dry bean assessment for the previous year and shall include:

(a) The expenditure of all funds by the commission during the previous year for the administration of the Dry Bean Resources Act;

(b) The action taken by the commission on all contracts requiring the expenditure of funds by the commission;

(c) A description of all such contracts;

(d) Detailed explanation of all programs relating to the discovery, promotion, and development of bean products and industries for the utilization of dry beans, the direct expense associated with each program, and copies of such programs if in writing; and

(e) The name and address of each member of the commission and a copy of all rules and regulations adopted and promulgated by the commission.

(2) The report and a copy of all contracts requiring expenditure of funds by the commission shall be available to the public upon request. Notice of availability of such report shall be provided to the Director of Agriculture, the Clerk of the Legislature, and each grower and first purchaser subject to the checkoff.

Source: Laws 1987, LB 145, § 28; Laws 2015, LB242, § 3.

2-3763 Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

The State Treasurer shall establish in the treasury of the State of Nebraska a fund to be known as the Dry Bean Development, Utilization, Promotion, and Education Fund, to which fund shall be credited funds collected by the commission pursuant to the Dry Bean Resources Act, including license fees, royalties, or any repayments relating to the fund. The fund shall be expended for the administration of such act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1987, LB 145, § 29; Laws 1995, LB 7, § 20; Laws 2015, LB242, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 38

MARKETING, DEVELOPMENT, AND PROMOTION OF AGRICULTURAL PRODUCTS

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

Section

2-3812. Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

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

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

2-3812 Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

There is hereby created the Nebraska Agricultural Products Marketing Cash Fund. The fund shall consist of administrative costs collected under subsection (4) of section 54-742 and money appropriated by the Legislature which is received as gifts or grants or collected as fees or charges from any source, including federal, state, public, and private. The fund shall be utilized for the purpose of carrying out the Nebraska Agricultural Products Marketing Act and for purposes of subsection (4) of section 54-742. Any money in such fund available for investment shall be invested by the state investment officer

pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1982, LB 942, § 1; Laws 1988, LB 807, § 7; Laws 1995, LB 7, § 21; Laws 2013, LB423, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

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

(1) 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.

(2) 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, (a) promotion and market development, (b) value-added processing of alternative and traditional commodities, (c) agricultural diversification, including poultry development and aquaculture, (d) agricultural cooperatives, and (e) alternative crops.

(3) 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.

(4) For purposes of this section, unless the context otherwise requires, private sector includes, but is not 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; Laws 2017, LB644, § 2.

ARTICLE 39

MILK

(c) DAIRY INDUSTRY DEVELOPMENT ACT

Section

- 2-3951. Nebraska Dairy Industry Development Board; created; members; qualifications.
- 2-3951.01. Board members; appointment; terms; officers; expenses.
- 2-3951.02. Board members; nomination and appointment.
- 2-3951.03. Board members; vacancies.
- 2-3951.04. Board members; nominations; notification; procedure.
- 2-3962. Board; report; contents.

Section

(d) NEBRASKA MILK ACT

- 2-3965. Act, how cited; provisions adopted by reference; copies.
- 2-3966. Terms, defined.
- 2-3971. Permit fees; inspection fees; other fees; rate.
- 2-3975. Director; surveys of milksheds; make and publish results.
- 2-3976. Pure Milk Cash Fund; created; use; investment.
- 2-3977. Field representative; powers; field representative permit; applicant; qualifications.
- 2-3981. Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.
- 2-3982. Classification for sediment content; sediment standards; determination; effect.
- 2-3982.01. Grade A Pasteurized Milk Ordinance requirements; facility in existence prior to July 1, 2013; other facilities; requirements applicable.
- 2-3986. Milk in farm bulk tanks; cooled; temperature.
- 2-3988. Milk utensils; sanitation requirements.
- 2-3989. Water supply requirements; testing.

(e) DAIRY STUDY

- 2-3993. Repealed. Laws 2017, LB2, § 3.

(c) DAIRY INDUSTRY DEVELOPMENT ACT

2-3951 Nebraska Dairy Industry Development Board; created; members; qualifications.

The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska. Board members shall be nominated and appointed as provided in sections 2-3951.01 to 2-3951.04.

Source: Laws 1992, LB 275, § 4; Laws 2004, LB 836, § 2; Laws 2013, LB70, § 1.

2-3951.01 Board members; appointment; terms; officers; expenses.

(1) Members of the board shall, as nearly as possible, be representative of all first purchasers of milk and individual producer-processors in the state and, to the extent practicable, result in equitable representation of the various interests of milk producers both in terms of the manner in which milk is marketed and geographic distribution of milk production units in the state.

(2) The terms of the members of the board shall be three years, except that the first term of the initial and additional members of the board shall be staggered so that one-third of the members are appointed each year. The number of years for the first term of new and additional members shall be determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee shall be an ex officio member of the board but shall have no vote in board matters.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

(5) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2004, LB 836, § 3; Laws 2013, LB70, § 2.

2-3951.02 Board members; nomination and appointment.

(1) Members of the board shall be nominated and appointed as follows:

(a) Each first purchaser of milk which purchases milk from at least twenty-one milk producers may submit to the Governor the names of up to two nominees for each forty milk production units, or major portion thereof, from which the first purchaser purchases milk. The Governor shall appoint one member for each forty production units, or major portion thereof, from nominees submitted pursuant to this subdivision, except that if milk production units certified by the Department of Agriculture have decreased so that each board member appointed pursuant to this subdivision represents less than a major portion of forty production units, the Governor shall maintain representation of one member for each forty production units, or major portion thereof, by not filling a vacancy caused by a member's term expiring; and

(b) All other first purchasers of milk and individual producer-processors who are not included among milk production units claimed by a first purchaser of milk entitled to submit nominees under subdivision (1)(a) of this section shall be combined as a group for the purpose of submitting nominees, and each first purchaser and individual producer-processor of the group may nominate up to two nominees. The Governor shall appoint two members from nominees submitted pursuant to this subdivision.

(2) Whenever the number of members of the board as determined by subsection (1) of this section results in less than seven members, the Governor shall appoint a member or members from the state at large to maintain membership of the board at seven members. Whenever such appointment is required, the board shall call for and submit a list of two or more nominees for each additional member needed to the Governor, and the Governor shall appoint a member or members from the nominees submitted pursuant to this subsection.

(3) Nominations in the case of term expiration or new or at-large membership and for all other vacancies shall be provided according to the process prescribed in section 2-3951.04. The Governor may choose the members of the board from the nominees submitted or may reject all nominees. If the Governor rejects all nominees, names of nominees shall again be provided to the Governor until the appointment is filled.

Source: Laws 2004, LB 836, § 4; Laws 2013, LB70, § 3.

2-3951.03 Board members; vacancies.

(1) A vacancy on the board exists in the event of the death, incapacity, removal, or resignation of any member; when a member ceases to be a resident of Nebraska; when a member ceases to be a producer in Nebraska; or when the member's term expires. Members whose terms have expired shall continue to serve until their successors are appointed and qualified, except that if such a vacancy will not be filled, as determined by the Governor under section 2-3951.02, the member shall not serve after the expiration of his or her term.

(2) For purposes of filling vacancies on the board, the Governor shall appoint one member from up to two nominees submitted by the vacating member's nominator under section 2-3951.02. In the event of a vacancy, the board shall certify to the vacating member's nominator that such a vacancy exists and shall request nominations to fill the vacancy for the remainder of the unexpired term or for a new term, as the case may be.

Source: Laws 2004, LB 836, § 5; Laws 2013, LB70, § 4.

2-3951.04 Board members; nominations; notification; procedure.

(1) When nominations for board members are required, written notification shall be given to each producer represented or to be represented by such member, including an at-large member. The first purchaser or purchasers of milk shall notify each producer from whom the first purchaser buys milk that each producer may submit written nominations. If the group represented is a combination of first purchasers of milk and individual producer-processors or if the member is an at-large member, the individual producer-processors shall receive notification from the Department of Agriculture.

(2) Nominations shall be in writing and shall contain an acknowledgment and consent by the producer being nominated. The nomination shall be returned by the producer to the first purchaser of milk or to the department from whom the producer received notification within fifteen days after the receipt of the notification. For nominations to replace a member whose term is to expire or for a new member, the producers shall receive notification between August 1 and August 15 preceding the expiration of the term of the member or the beginning of the term of a new member. For all other vacancies, the producers shall receive notification within thirty days after the member vacates his or her position on the board or within thirty days after the board calls for an at-large member or members as provided in section 2-3951.02.

(3) The first purchasers of milk, the department, or the board shall submit nominations to the Governor by September 30, in the case of term expiration or new or at-large member, or forty-five days after the member vacates his or her position for all other vacancies. The Governor shall make the appointments within thirty days after receipt of the nominations.

(4) All nominees shall meet the qualifications provided in section 2-3951.

Source: Laws 2004, LB 836, § 6; Laws 2013, LB70, § 5.

2-3962 Board; report; contents.

The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 2-3958 for the preceding fiscal year, and the report shall include:

(1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;

(2) A brief description of all contracts requiring the expenditure of funds by the board;

(3) The action taken by the board on all such contracts;

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the board; and

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

The board shall submit the report electronically to the Clerk of the Legislature and shall make the report available to the public upon request.

Source: Laws 1992, LB 275, § 15; Laws 2013, LB222, § 1.

(d) NEBRASKA MILK ACT

2-3965 Act, how cited; provisions adopted by reference; copies.

(1) Sections 2-3965 to 2-3992 and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2011 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Shippers, 2011 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2011 Revision; and

(d) Evaluation of Milk Laboratories, 2011 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2011 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted;

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act; and

(f) Section 1 of the ordinance, Definitions, is adopted except for paragraph W.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the

Legislature, and Department of Agriculture. The copies filed with the Clerk of the Legislature shall be filed electronically.

Source: Laws 1980, LB 632, § 1; Laws 1986, LB 900, § 1; Laws 1990, LB 856, § 2; Laws 1992, LB 366, § 2; Laws 1997, LB 201, § 1; Laws 2001, LB 198, § 1; R.S.Supp.,2006, § 2-3901; Laws 2007, LB111, § 1; Laws 2013, LB67, § 1; Laws 2013, LB222, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

2-3966 Terms, defined.

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

(1) 3-A Sanitary Standards means the standards for dairy equipment promulgated jointly by the Sanitary Standards Subcommittee of the Dairy Industry Committee, the Committee on Sanitary Procedure of the International Association for Food Protection, and the Milk Safety Team, Food and Drug Administration, Public Health Service, Center for Food Safety and Applied Nutrition, Department of Health and Human Services in effect on January 1, 2013;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk byproduct;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) First purchaser means a person who purchases raw milk directly from the farm for processing or for resale to a processor, who purchases milk products or components of milk for processing or resale to a processor, or who utilizes milk from the first purchaser's own farm for the manufacturing of milk products or dairy products;

(10) Grade A Pasteurized Milk Ordinance means the documents delineated in subsection (3) of section 2-3965;

(11) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(12) Milk distributor means a person who distributes milk, fluid milk, milk products, or dairy products whether or not the milk is shipped within or into the state. The term does not include a milk plant, a bulk milk hauler/sampler, or

a milk producer, as such terms are defined in the Grade A Pasteurized Milk Ordinance, or a food establishment, as defined in the Nebraska Pure Food Act;

(13) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(14) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws 1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2; Laws 2013, LB67, § 2.

Cross References

Nebraska Pure Food Act, see section 81-2,239.

2-3971 Permit fees; inspection fees; other fees; rate.

(1)(a) As a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

- (i) Milk plant processing 100,000 or less pounds per month...\$100.00;
- (ii) Milk plant processing 100,001 to 2,000,000 pounds per month...\$500.00;
- (iii) Milk plant processing more than 2,000,000 pounds per month...\$1,000.00;
- (iv) Receiving station.....\$200.00;
- (v) Plant fabricating single-service articles..\$300.00;
- (vi) Milk distributor.....\$150.00;
- (vii) Transfer station.....\$100.00;
- (viii) Milk tank truck cleaning facility.....\$100.00;
- (ix) Bulk milk hauler/sampler.....\$25.00;
- (x) Field representative.....\$25.00;
- (xi) Grade A Milk producer.....No Fee; and
- (xii) Manufacturing milk producer.....No Fee.

(b) On or before each August 1 a Milk Transportation Company shall pay twenty-five dollars for each milk tank truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(2)(a) All milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

(b) There shall be three categories of inspection fees as follows:

(i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;

(ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and

(iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the last day of the month for milk or components of milk produced or processed during the preceding month. Any unpaid fee shall be increased one and one-half percent each month beginning with the day following the date the fee was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid. The purpose of increasing the fees is to cover the administrative costs associated with collecting fees, and all money collected as increased fees shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of the program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

(3) If any person required to have a permit pursuant to the act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Source: Laws 1980, LB 632, § 6; Laws 1986, LB 900, § 6; Laws 1992, LB 366, § 4; Laws 1997, LB 752, § 58; Laws 2001, LB 198, § 3; R.S.Supp.,2006, § 2-3906; Laws 2007, LB111, § 7; Laws 2013, LB67, § 3.

2-3975 Director; surveys of milksheds; make and publish results.

The director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Milk Act. The director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services, United States Food and Drug Administration, in its documents, as delineated in section 2-3965, entitled Methods of Making Sanitation Ratings of Milk Shippers and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments.

Source: Laws 1980, LB 632, § 10; Laws 1986, LB 900, § 9; Laws 1990, LB 856, § 4; Laws 1995, LB 406, § 1; Laws 1997, LB 201, § 4; Laws 2001, LB 198, § 6; R.S.Supp.,2006, § 2-3910; Laws 2007, LB111, § 11; Laws 2013, LB67, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

2-3976 Pure Milk Cash Fund; created; use; investment.

All fees paid to the department in accordance with the Nebraska Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1980, LB 632, § 11; Laws 1986, LB 900, § 10; Laws 1995, LB 7, § 23; R.S.1943, (1997), § 2-3911; Laws 2007, LB111, § 12; Laws 2013, LB67, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-3977 Field representative; powers; field representative permit; applicant; qualifications.

(1) Milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise provide for the services of a competent and qualified field representative who may:

(a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;

(b) Collect and submit samples at the request of the department; and

(c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 2-3971. The permit shall expire on July 31 of the year following issuance.

Source: Laws 2007, LB111, § 13; Laws 2013, LB67, § 6.

2-3981 Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.

(1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever

any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subsection (2) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk Ordinance relating to somatic cells shall apply to milk for manufacturing purposes.

(5) The industry shall test all producer's milk and bulk milk pickup tankers for drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance.

Source: Laws 1980, LB 632, § 17; Laws 1986, LB 900, § 14; Laws 1988, LB 871, § 20; Laws 1993, LB 268, § 3; Laws 1997, LB 201, § 5; Laws 2001, LB 198, § 9; R.S.Supp.,2006, § 2-3917; Laws 2007, LB111, § 17; Laws 2013, LB67, § 7.

2-3982 Classification for sediment content; sediment standards; determination; effect.

(1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, 2011.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Source: Laws 1986, LB 900, § 15; Laws 1993, LB 268, § 4; Laws 2001, LB 198, § 10; R.S.Supp.,2006, § 2-3917.01; Laws 2007, LB111, § 18; Laws 2013, LB67, § 8.

2-3982.01 Grade A Pasteurized Milk Ordinance requirements; facility in existence prior to July 1, 2013; other facilities; requirements applicable.

A facility producing milk for manufacturing purposes in existence prior to July 1, 2013, which does not meet all of the requirements of the Grade A Pasteurized Milk Ordinance shall be acceptable for use only if it meets the requirements of sections 2-3983 to 2-3989. After July 1, 2013, all new facilities that produce milk and facilities that produce milk that are under new ownership shall be required to meet the requirements of the Grade A Pasteurized Milk Ordinance.

Source: Laws 2013, LB67, § 9.

2-3986 Milk in farm bulk tanks; cooled; temperature.

Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A Sanitary Standards.

Source: Laws 1969, c. 5, § 12, p. 75; R.S.1943, (1976), § 81-263.98; Laws 1980, LB 632, § 22; Laws 1986, LB 900, § 18; Laws 1993, LB 268, § 8; R.S.1943, (1997), § 2-3922; Laws 2007, LB111, § 22; Laws 2013, LB67, § 10.

2-3988 Milk utensils; sanitation requirements.

At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A Sanitary Standards and comply with applicable rules and regulations of the department. Equipment manufactured in conformity with 3-A Sanitary Standards complies with the sanitary design and construction standards of the Nebraska Milk Act.

Source: Laws 1969, c. 5, § 14, p. 76; R.S.1943, (1976), § 81-263.100; Laws 1980, LB 632, § 24; Laws 1986, LB 900, § 20; Laws 1993, LB 268, § 10; Laws 2001, LB 198, § 11; R.S.Supp.,2006, § 2-3924; Laws 2007, LB111, § 24; Laws 2013, LB67, § 11.

2-3989 Water supply requirements; testing.

The water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services shall be tested annually, and wells or water

sources which do meet the construction standards of the Department of Health and Human Services shall be tested every three years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. All new producers issued permits under the Nebraska Milk Act shall be required to meet the construction standards established by the Department of Health and Human Services for private water supplies.

Source: Laws 1969, c. 5, § 15, p. 76; R.S.1943, (1976), § 81-263.101; Laws 1980, LB 632, § 25; Laws 1986, LB 900, § 21; Laws 1989, LB 38, § 5; Laws 1993, LB 268, § 11; Laws 1996, LB 1044, § 40; R.S.1943, (1997), § 2-3925; Laws 2007, LB111, § 25; Laws 2007, LB296, § 19; Laws 2013, LB67, § 12.

(e) DAIRY STUDY

2-3993 Repealed. Laws 2017, LB2, § 3.

ARTICLE 43

AGRICULTURAL LIMING MATERIALS

Section

- 2-4323. Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.
- 2-4324. Fees; disbursement.
- 2-4326. Director; department; enforcement; orders; seizure of material; procedure.
- 2-4327. Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

2-4323 Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.

(1) Every retailer licensee shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department, setting forth the number of net tons of each agricultural liming material sold in Nebraska during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Agricultural Liming Materials Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to this section. The inspection fee shall be at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be set at an amount to cover the expenses of the inspection provided in section 2-4325 and the costs of administering this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product. In the case of agricultural lime slurry, the fee shall be paid on the base lime material only.

(2) If a person fails to report and pay the fee required by subsection (1) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may

waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations or licenses on file for such person.

(3) The director shall annually make information available in such form as he or she may deem proper concerning the tons of agricultural liming material sold in this state. Such report shall in no way divulge the operation of any registrant or licensee.

Source: Laws 1981, LB 396, § 23; Laws 1983, LB 539, § 8; Laws 2015, LB92, § 1.

2-4324 Fees; disbursement.

All fees paid to the department pursuant to the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. All money credited to the fund shall be used by the department to aid in defraying expenses of administering the Agricultural Liming Materials Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 1981, LB 396, § 24; Laws 2003, LB 157, § 3; Laws 2015, LB92, § 2.

Cross References

Nebraska Commercial Fertilizer and Soil Conditioner Act, see section 81-2,162.22.

2-4326 Director; department; enforcement; orders; seizure of material; procedure.

(1) When the director has reasonable cause to believe agricultural liming materials are being sold in violation of the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated pursuant to the act, he or she may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of agricultural liming material. The department may order the owner or custodian to hold such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of the act or the rules and regulations. Such material shall be released when the act or the rules and regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

(2) Any agricultural liming materials not in compliance with the act or the rules and regulations shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which the agricultural liming materials are located. If the court finds the agricultural liming materials to be in violation of the act or the rules and regulations and orders the condemnation

of the agricultural liming materials, such agricultural liming materials shall be disposed of in any manner consistent with the quality of the agricultural liming materials and the laws of the State of Nebraska. The court shall not order disposition without first giving the claimant an opportunity to apply to the court for release of the agricultural liming materials or for permission to process or relabel such product to bring it into compliance with the act.

Source: Laws 1981, LB 396, § 26; Laws 1983, LB 539, § 10; Laws 1988, LB 871, § 27; Laws 2015, LB92, § 3.

2-4327 Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

(1) Any person violating the Agricultural Liming Materials Act shall be guilty of a Class IV misdemeanor upon the first conviction thereof, and a Class II misdemeanor for each subsequent conviction thereof.

(2) Nothing in the act shall be construed to require the director or his or her duly authorized agent to report a violation in order to prosecute or to institute seizure proceedings as a result of minor violations of the act when he or she believes that the public interest will best be served by a suitable written warning to the violator.

(3) The Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, shall pursue appropriate proceedings pursuant to section 2-4326 or this section or both without delay.

(4) In order to insure compliance with the act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an action, order, or ruling made by the department pursuant to the act may appeal the action, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1981, LB 396, § 27; Laws 2015, LB92, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 46

EROSION AND SEDIMENT CONTROL

Section

- 2-4603. Terms, defined.
- 2-4604. State program; director; duties; program contents; revisions; hearings.
- 2-4605. District program; contents; review.
- 2-4608. Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.
- 2-4610. Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.

Section

2-4612. Order for immediate compliance; when authorized.

2-4613. District court action; procedures; order; appeal; failure to comply with order; effect.

2-4603 Terms, defined.

For purposes of the Erosion and Sediment Control Act, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) Conservation agreement means an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the district or other public entity furnishing technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;

(3) Director means the Director of Natural Resources;

(4) District means a natural resources district;

(5) Erosion or sediment control practice means:

(a) The construction or installation and maintenance of permanent structures or devices necessary to carry, to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss tolerance level and which does not carry or constitute sewage or industrial or other waste;

(b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss tolerance level or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or

(c) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss tolerance level;

(6) Excess erosion means the occurrence of erosion in excess of the applicable soil-loss tolerance level which causes or contributes to an accumulation of sediment upon the lands of any other person to the detriment or damage of such other person;

(7) Farm unit conservation plan means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss tolerance level. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(8) Nonagricultural land-disturbing activity means a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land, which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but does not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fenceposts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property;

(d) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size; and

(e) Activities related to the operation, construction, or maintenance of industrial or commercial public power district or public power and irrigation district facilities or sites when such activity is conducted pursuant to state or federal law or is part of the operational plan for such facility or site;

(9) Person means any individual, partnership, limited liability company, firm, association, joint venture, public or private corporation, trust, estate, commission, board, institution, utility, cooperative, municipality or other political subdivision of this state, interstate body, or other legal entity;

(10) Soil and water conservation practice means a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss tolerance level from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice includes, but is not limited to:

(a) Permanent soil and water conservation practice, including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice, including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(11) Soil-loss tolerance level means the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act. Soil loss may be impacted by water erosion which may include (a) sheet and rill erosion which includes relatively uniform soil loss across the entire field slope which may leave small channels located at regular intervals across the slope and (b) ephemeral gully erosion which occurs in well-defined depressions or natural drainageways where concentrated overland flow results in the convergence of rills forming deeper and wider channels.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22; Laws 2015, LB206, § 1.

2-4604 State program; director; duties; program contents; revisions; hearings.

(1) The director shall, in cooperation with the commission, the Department of Environmental Quality, the Natural Resources Conservation Service of the United States Department of Agriculture, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

(a) The soil-loss tolerance level for the various types of soils in the state;

(b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss tolerance level;

(c) Guidelines for establishing priorities for implementation of the program at the state and local levels;

(d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and

(e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program may be revised by the director and the commission at any time. Before approving any such changes, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5; Laws 2015, LB206, § 2.

2-4605 District program; contents; review.

(1) Each district shall, with the approval of the director, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss tolerance levels for the various types of soils in the district. The soil-loss tolerance levels shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss tolerance level that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's

program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Source: Laws 1986, LB 474, § 5; Laws 1988, LB 594, § 2; Laws 2015, LB206, § 3.

2-4608 Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.

(1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss tolerance level. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excess erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that excess erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator describing the land and stating as nearly as possible the extent to which the soil erosion exceeds the applicable soil-loss tolerance level. When the complained-of erosion is the result of agricultural, horticultural, or silvicultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss tolerance level. When the complained-of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if appropriate, the operator to either bring such land into conformance with the soil-loss tolerance level or to prevent sediment resulting from excess erosion from leaving such land.

(3) The district may specify, as applicable, alternative soil and water conservation practices or erosion or sediment control practices which the owner and, if appropriate, the operator may use to comply with the administrative order. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state a reasonable time after service or mailing of the order when the work necessary to establish or maintain erosion or sediment control

practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, when the work shall be satisfactorily completed;

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 2-4610; and

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(4) Following refusal of a landowner to discontinue an activity causing erosion described in this section and to establish a plan and schedule for eliminating excess erosion pursuant to subsection (2) of this section, and if the immediate discontinuance of such activity is necessary to reduce or eliminate damage to neighboring property, the district may petition the district court for an order to the owner and, if appropriate, the operator, to immediately cease and desist such activity until excess erosion can be brought into conformance with the soil-loss tolerance level or sediment resulting from excess erosion is prevented from leaving the property.

(5) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Source: Laws 1986, LB 474, § 8; Laws 1988, LB 594, § 3; Laws 1994, LB 480, § 23; Laws 2015, LB206, § 4.

2-4610 Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.

(1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss tolerance level shall, for purposes of such land, be deemed to be in compliance with the requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) To prevent excess erosion and sediment from leaving the land due to any agricultural or nonagricultural land-disturbing activity, cost-sharing assistance may be available from any district. Such assistance may be used for any erosion or sediment control practice. The lack of available cost-sharing assistance does not offset the requirement that the owner and, if appropriate, the operator of such land comply with the terms of an approved plan of compliance or an administrative order.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24; Laws 2015, LB206, § 5.

2-4612 Order for immediate compliance; when authorized.

The district shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order or the practices are not being operated, utilized, or maintained as required;

(3) The work is not of a type or quality specified by the district and, when completed, it will not or does not reduce soil erosion from such land below the soil-loss tolerance level or, to the extent excess erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excess erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Source: Laws 1986, LB 474, § 12; Laws 1988, LB 594, § 5; Laws 2015, LB206, § 6.

2-4613 District court action; procedures; order; appeal; failure to comply with order; effect.

In the district court action, the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss tolerance level and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Court of Appeals. Any person who fails to comply with the court order issued within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Source: Laws 1986, LB 474, § 13; Laws 1991, LB 732, § 10; Laws 2015, LB206, § 7.

ARTICLE 49

CLIMATE ASSESSMENT

Section

2-4902. Climate Assessment Response Committee; duties.

2-4902 Climate Assessment Response Committee; duties.

The Climate Assessment Response Committee shall:

(1) Provide timely and systematic data collection, analysis, and dissemination of information about drought and other severe climate occurrences to the Governor and to other interested persons;

(2) Provide the Governor and other interested persons with information and advice relevant to requests for federal disaster declarations and to the use of funds and other types of assistance available to the state because of such declarations;

(3) Establish criteria for startup and shutdown of various assessment and response activities by state and federal agencies during drought and other climate-related emergencies;

(4) Provide an organizational structure that assures information flow and defines the duties and responsibilities of all agencies during times of drought and climate-related emergencies;

(5) Maintain a current inventory of state and federal agency responsibilities in assessing and responding to drought and other climate-related emergencies;

(6) Provide a mechanism for the improvement of methods of assessing impacts of drought on agriculture and industry;

(7) Provide such other coordination and communication among federal and state agencies as is deemed appropriate by such committee;

(8) Provide the Governor and other interested persons with information and research on the impacts of cyclical climate change in Nebraska, including impacts on physical, ecological, and economic areas, and attempt to anticipate the unintended consequences of climate adaptation and mitigation;

(9) Facilitate communication between stakeholders and the state about cyclical climate change impacts and response strategies;

(10) By December 1, 2014, provide a report on cyclical climate change in Nebraska to the Governor and electronically to the Legislature which includes key points, overarching recommendations, and options that emerge from other reports and recommendations submitted to the Climate Assessment Response Committee; and

(11) Perform such other climate-related assessment and response functions as are desired by the Governor.

Source: Laws 1992, LB 274, § 2; Laws 2013, LB583, § 1; Laws 2014, LB1008, § 1.

ARTICLE 53

CARBON SEQUESTRATION

Section

2-5301. Repealed. Laws 2017, LB644, § 21.

2-5302. Repealed. Laws 2017, LB644, § 21.

2-5303. Repealed. Laws 2017, LB644, § 21.

2-5305. Repealed. Laws 2017, LB644, § 21.

2-5306. Repealed. Laws 2017, LB644, § 21.

2-5301 Repealed. Laws 2017, LB644, § 21.

2-5302 Repealed. Laws 2017, LB644, § 21.

2-5303 Repealed. Laws 2017, LB644, § 21.

2-5305 Repealed. Laws 2017, LB644, § 21.

2-5306 Repealed. Laws 2017, LB644, § 21.

ARTICLE 57
INDUSTRIAL HEMP

Section

2-5701. Postsecondary institution or Department of Agriculture; industrial hemp; grown or cultivated for purposes of research; sites; certification.

2-5701 Postsecondary institution or Department of Agriculture; industrial hemp; grown or cultivated for purposes of research; sites; certification.

(1) A postsecondary institution in this state or the Department of Agriculture may grow or cultivate industrial hemp if the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.

(2) Sites used for growing or cultivating industrial hemp must be certified by, and registered with, the Department of Agriculture.

(3) The Department of Agriculture shall adopt and promulgate rules and regulations with respect to the growth or cultivation of industrial hemp and the certification and registration of sites growing or cultivating industrial hemp as authorized under this section.

(4) For purposes of this section:

(a) Agricultural pilot program means a pilot program to study the growth, cultivation, or marketing of industrial hemp;

(b) Industrial hemp means the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent on a dry weight basis; and

(c) Postsecondary institution means a postsecondary institution as defined in section 85-2403 that also meets the requirements of 20 U.S.C. 1001, as such section existed on January 1, 2014.

Source: Laws 2014, LB1001, § 1.

AERONAUTICS

CHAPTER 3 AERONAUTICS

Article.

1. General Provisions. 3-101 to 3-164.
2. Airports and Landing Fields. 3-201 to 3-239.
3. Airport Zoning. 3-301 to 3-333.
4. Regulation of Structures. 3-402 to 3-409.
5. City Airport Authority. 3-502.
6. County Airport Authority. 3-613.
8. Nebraska State Airline Authority. Repealed.

ARTICLE 1

GENERAL PROVISIONS

Section

- 3-101. Terms, defined.
- 3-102. Purpose of act.
- 3-103. Division of Aeronautics; director; appointment; qualifications; duties; oath.
- 3-104. Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.
- 3-105. Division; seal; rules and regulations; adopt.
- 3-106. Division; aircraft; purchase; use; report; contents.
- 3-107. Division; general supervision; state funds; expenditure; recovery.
- 3-108. Division; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.
- 3-109. Division; powers; rules and regulations; applicability to federal government.
- 3-110. Rules and regulations; conform to federal regulation.
- 3-111. Rules and regulations; where kept.
- 3-113. Division; engineering and technical services; availability.
- 3-114. Division; represent state in aeronautical matters.
- 3-115. Actions by or against division; intervention.
- 3-116. Enforcement; intergovernmental cooperation.
- 3-117. Director; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.
- 3-118. Division; reports of investigations or hearings; evidence; how used.
- 3-119. Division; assist in acquisition, development, operation, or maintenance of airports.
- 3-120. Division; contracts; authorized.
- 3-121. Division; airway and airport; exclusive right prohibited.
- 3-123. Division; cooperate with federal government; comply with federal laws.
- 3-124. Division; acceptance of gifts of money, authorized; terms and conditions.
- 3-125. Division; contracts; laws governing.
- 3-126. Aeronautics Cash Fund; created; use; investment.
- 3-127. Director; duties.
- 3-128. Division; regulation of airports.
- 3-131. License, certificate, permit, or registration; duty to carry, present for inspection, and exhibit.
- 3-133. Airports; license; requirement; approval of site; operation without license unlawful.
- 3-134. Air navigation facility; certificate of approval; hearing; notice; order; license.
- 3-135. Air navigation facility; certificate of approval; hearing; standards to be considered.
- 3-137. Air navigation facility; certificate of approval; revocation, grounds.

Section

- 3-139. Division; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.
- 3-140. Appeal; procedure.
- 3-141. Division; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.
- 3-142. Division; airports; easements; acquire by condemnation.
- 3-143. Division; joint activities; authorized.
- 3-144. Division; right of eminent domain; procedure.
- 3-145. Division; airport; lease; sell; supplies.
- 3-146. Division; rentals; power to determine; charges; lien; enforce.
- 3-147. Airports; acquisition of land; purpose.
- 3-148. Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.
- 3-149. Aircraft fuel tax; collection; violation; penalty.
- 3-152. Violations; penalty.
- 3-154. Act, how cited.
- 3-155. Real property formerly used as army airfields; disposal; conditions.
- 3-156. Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.
- 3-157. Division; real property; lease; when; requirements.
- 3-158. Person renting aircraft; insurance information; notice.
- 3-159. Authorization to purchase new aircraft; sale of aircraft.
- 3-160. Employees of Department of Aeronautics; transfer to Division of Aeronautics; how treated.
- 3-161. Reference to Department of Aeronautics in contracts or other documents; how construed; contracts and property; how treated.
- 3-162. Actions and proceedings; how treated.
- 3-163. Provisions of law; how construed.
- 3-164. Property of Department of Aeronautics; transfer to Division of Aeronautics; appropriation and salary limit; how treated.

3-101 Terms, defined.

For purposes of the State Aeronautics Act and the laws of this state relating to aeronautics, the following words, terms, and phrases shall have the meanings given in this section, unless otherwise specifically defined or unless another intention clearly appears or the context otherwise requires:

(1) Aeronautics means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction;

(2) Aircraft means any contrivance now known, hereafter invented, used, or designed for navigation of or flight in the air;

(3) Airport means (a) any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing, or repairing of aircraft or for receiving or discharging passengers or cargo, (b) all appurtenant areas used or suitable for airport buildings or other airport facilities, and (c) all appurtenant rights-of-way, whether heretofore or hereafter established;

(4) Air navigation facility means any facility, other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an

advantage or convenience to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area and any combination of any or all of such facilities;

(5) Air navigation means the operation or navigation of aircraft in the air space over this state or upon any airport or restricted landing area within this state;

(6) Airman means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him or her) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances and any individual who serves in the capacity of aircraft dispatcher or air traffic control-tower operator;

(7) Air instruction means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club;

(8) Aeronautics instructor means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his or her facilities an air school or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state or any institution of higher learning duly accredited and approved for carrying on collegiate work while engaged in his or her duties as such instructor;

(9) Airport protection privileges means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof;

(10) Airport hazard means any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off;

(11) Civil aircraft means any aircraft other than a public aircraft;

(12) Commission means the Nebraska Aeronautics Commission;

(13) Director means the Director of Aeronautics;

(14) Division means the Division of Aeronautics of the Department of Transportation;

(15) Flying club means any person, other than an individual, who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both;

(16) Location means the general vicinity to be served by a specific airport;

(17) Municipality means any county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this

state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities;

(18) Navigable air space means air space above the minimum altitudes of flight prescribed by the laws of this state or by the rules and regulations adopted and promulgated by the division consistent therewith;

(19) Operation of aircraft or operate aircraft means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, in the capacity of owner, lessee, or otherwise, of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state;

(20) Privately owned public use airport means any airport owned by a person which is primarily engaged in the business of providing necessary services and facilities for the operation of civil aircraft and which (a) has at least one paved runway, (b) is engaged in the retail sale of aviation gasoline or aviation jet fuel, and (c) possesses facilities for the sheltering, servicing, or repair of aircraft;

(21) Public aircraft means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes;

(22) Restricted landing area means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission;

(23) Site means the specific land area to be used as an airport; and

(24) State airway means a route in the navigable air space over and above the lands or waters of this state, designated by the division as a route suitable for air navigation.

Source: Laws 1945, c. 5, § 1, p. 75; Laws 1976, LB 460, § 1; Laws 1993, LB 121, § 82; Laws 1995, LB 609, § 1; Laws 2017, LB339, § 1.

3-102 Purpose of act.

The purpose of the State Aeronautics Act is to further the public interest and aeronautical progress by (1) providing for the protection and promotion of safety in aeronautics, (2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states, (3) revising existing statutes relative to the development and regulation of aeronautics so as to grant such powers to and impose such duties upon the division in order that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics, (4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others, and (5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and

for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of federal agencies.

Source: Laws 1945, c. 5, § 2, p. 79; Laws 2017, LB339, § 2.

3-103 Division of Aeronautics; director; appointment; qualifications; duties; oath.

(1) The Division of Aeronautics shall be a division of the Department of Transportation.

(2)(a) Until December 31, 2017, the chief administrative officer of the division shall be the director, to be known as the Director of Aeronautics, and shall be appointed by the Governor, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers. The director shall be bonded or insured as required by section 11-201. The director shall receive such compensation as the Governor, with the approval of the commission, shall determine, subject to the provisions of the legislative appropriations bill.

(b) Beginning January 1, 2018, the chief administrative officer of the division shall be the Director of Aeronautics who shall be appointed by and report directly to the Director-State Engineer, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers.

Source: Laws 1945, c. 5, § 3(1), p. 80; Laws 1947, c. 16, § 1, p. 95; Laws 1978, LB 653, § 3; Laws 2004, LB 884, § 2; Laws 2017, LB339, § 3.

3-104 Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.

(1) There is hereby created the Nebraska Aeronautics Commission which shall consist of five members, who shall be appointed by the Governor. The terms of office of the members of the commission initially appointed shall expire on March 1 of the years 1946, 1947, 1948, 1949, and 1950, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term. All members of the commission shall be citizens and bona fide residents of the state and, in making such an appointment, the Governor shall take into consideration the interest or training of the appointee

in some one or all branches of aviation. The commission shall, in December of each year, select a chairperson for the ensuing year. The Director of Aeronautics shall serve as secretary as set forth in section 3-127. Three members shall constitute a quorum, and no action shall be taken by less than a majority of the commission.

(2) The commission shall meet upon the written call of the chairperson, the director, or any two members of the commission. Regular meetings shall be held at the office of the division but, whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, the commission may hold meetings or proceedings at any other place designated by it. All meetings of the commission shall be open to the public. No member shall receive any salary for his or her service, but each shall be reimbursed for actual and necessary expenses incurred by him or her in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

(3)(a) Until December 31, 2017, it shall be the duty of the commission to advise the Governor relative to the appointment of the Director of Aeronautics, and the commission shall report to the Governor whenever it feels that the Director of Aeronautics is not properly fulfilling his or her duties.

(b) Beginning January 1, 2018, the commission shall advise the Director-State Engineer relative to the appointment of the Director of Aeronautics, and the commission shall report to the Director-State Engineer whenever the commission feels that the Director of Aeronautics is not properly fulfilling his or her duties. The commission shall also advise the Governor on the general status and state of aviation in Nebraska.

(c) The commission shall further act in an advisory capacity to the Director of Aeronautics and Director-State Engineer.

(4) The commission shall have, in addition, the following specific duties: (a) To allocate state funds and approve the use of federal funds to be spent for the construction or maintenance of airports; (b) to designate the locations and approve sites of airports; (c) to arrange and authorize the purchase of aircraft upon behalf of the state; (d) to select and approve pilots to be employed by the state, if any; and (e) to assist the Director of Aeronautics in formulating the regulations and policies to be carried out by the division under the terms of the State Aeronautics Act. The commission may allocate state funds for the promotion of aviation as defined for the purpose of this section by the division by rule and regulation. The director may designate one or more members of the commission to represent the division in conferences with officials of the federal government, of other states, of other agencies or municipalities of this state, or of persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 3(2), p. 80; Laws 1976, LB 460, § 2; Laws 1981, LB 204, § 12; Laws 1995, LB 609, § 2; Laws 2004, LB 824, § 1; Laws 2017, LB339, § 4.

3-105 Division; seal; rules and regulations; adopt.

The division shall adopt a seal and adopt and promulgate rules and regulations for its administration. All rules, regulations, and orders of the Department of Aeronautics adopted prior to July 1, 2017, in connection with the powers, duties, and functions transferred to the Division of Aeronautics of the Depart-

ment of Transportation pursuant to Laws 2017, LB339, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 1945, c. 5, § 4, p. 82; Laws 1955, c. 231, § 6, p. 719; Laws 1976, LB 460, § 3; Laws 1981, LB 545, § 3; Laws 2017, LB339, § 5.

Cross References

For promulgation of administrative rules, see Chapter 84, article 9.

3-106 Division; aircraft; purchase; use; report; contents.

(1) The division may purchase aircraft for the use of state government and may sell any state aircraft that is not needed or suitable for state uses. State aircraft shall be subject at all times to the written orders of the Governor for use and service in any branch of the state government. The division shall establish an hourly rate for use of a state aircraft by a state official or agency. The hourly rate shall not include an amount to recover the cost of acquisition by purchase, but shall include amounts for items such as variable fuel and oil costs, routine maintenance costs, landing fees, and preventive maintenance reserves. Such funds shall only be expended for the purposes provided for by this section.

(2) It is the intent of the Legislature that the use of state-owned, chartered, or rented aircraft by the division shall be for the sole purpose of state business. The division shall electronically file with the Clerk of the Legislature a quarterly report on the use of all state-owned, chartered, or rented aircraft by the division that includes the following information for each trip: The name of the agency or other entity traveling; the name of each individual passenger; all purposes of the trip; the destination and intermediate stops; the miles flown; and the duration of the trip.

Source: Laws 1945, c. 5, § 5, p. 82; Laws 2014, LB1016, § 2; Laws 2017, LB339, § 6.

3-107 Division; general supervision; state funds; expenditure; recovery.

The division shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and other air navigation facilities. No state funds for the acquisition, engineering, construction, improvement, or maintenance of airports shall be expended upon any project or for any work upon any such project which is not done under the supervision of the division. When any airport which has received state grant funds pursuant to the State Aeronautics Act ceases to be an airport or a privately owned public use airport, the division shall, consistent with all other provisions of state and federal law, seek to recover so much of the state funds provided to the airport as it may and shall deposit any such funds so recovered into the Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 6(1), p. 83; Laws 1995, LB 609, § 3; Laws 2017, LB339, § 7.

3-108 Division; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.

The division shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics and seek to coordinate the aeronautical activities of these bodies. To this end, the division is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under the State Aeronautics Act, or relating to the sound development of aeronautics, and to avail itself of the cooperation, services, records, and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of the act. The division shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities, insofar as may be practicable. The division shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency institutes an investigation. The division shall report to the appropriate federal agency all refusals to register federal licenses, certificates, or permits and all revocations of certificates of registration, and the reasons therefor, and all penalties, of which it has knowledge, imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules, regulations, or orders of the division.

Source: Laws 1945, c. 5, § 6(2), p. 83; Laws 2017, LB339, § 8.

3-109 Division; powers; rules and regulations; applicability to federal government.

The division may (1) perform such acts, (2) issue and amend such orders, (3) adopt and promulgate such reasonable general or special rules, regulations, and procedure, and (4) establish such minimum standards, consistent with the State Aeronautics Act, as it shall deem necessary to carry out the act and to perform its duties under the act as commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using, or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state. No rule or regulation of the division shall apply to airports or other air navigation facilities owned or controlled by the federal government within this state.

Source: Laws 1945, c. 5, § 6(3), p. 83; Laws 1947, c. 9, § 1; Laws 2017, LB339, § 9.

3-110 Rules and regulations; conform to federal regulation.

All rules and regulations adopted and promulgated by the division under the authority of the State Aeronautics Act shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics, the regulations duly promulgated thereunder, and rules and standards issued from time to time pursuant thereto.

Source: Laws 1945, c. 5, § 6(4), p. 84; Laws 2017, LB339, § 10.

3-111 Rules and regulations; where kept.

The division shall keep on file with the Secretary of State and at the principal office of the division a copy of all its rules and regulations for public inspection.

Source: Laws 1945, c. 5, § 6(5), p. 84; Laws 1976, LB 460, § 4; Laws 2017, LB339, § 11.

3-113 Division; engineering and technical services; availability.

The division may, insofar as is reasonably possible, offer its engineering or other technical services, without charge, to any municipality or to any person owning a privately owned public use airport desiring them in connection with the construction, maintenance, or operation or the proposed construction, maintenance, or operation of an airport or restricted landing area.

Source: Laws 1945, c. 5, § 6(7), p. 84; Laws 1995, LB 609, § 4; Laws 2017, LB339, § 12.

3-114 Division; represent state in aeronautical matters.

The division may represent the state in aeronautical matters before federal agencies and other state agencies.

Source: Laws 1945, c. 5, § 6(8), p. 85; Laws 2017, LB339, § 13.

3-115 Actions by or against division; intervention.

The division may participate as party plaintiff or defendant, or as intervenor on behalf of this state, or any municipality or citizen thereof, in any controversy having to do with any claimed encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

Source: Laws 1945, c. 5, § 6(9), p. 85; Laws 2017, LB339, § 14.

3-116 Enforcement; intergovernmental cooperation.

The division, the director, and every state, county, and municipal officer, charged with the enforcement of state and municipal laws, shall enforce and assist in the enforcement of the State Aeronautics Act, all rules and regulations adopted and promulgated pursuant thereto, and all other laws of this state relating to aeronautics. In the aid of such enforcement, general police powers are hereby conferred upon the director, and such of the officers and employees of the division as may be designated by it, to exercise such powers. The division is further authorized, in the name of this state, to enforce the act and the rules and regulations adopted and promulgated pursuant thereto by injunction in the courts of this state. Municipalities and persons owning privately owned public use airports are authorized to cooperate with the division in the development of aeronautics and aeronautical facilities in this state. The division may use the facilities and services of other agencies of the state to the utmost extent possible and such agencies are authorized and directed to make available such facilities and services.

Source: Laws 1945, c. 5, § 6(10), p. 85; Laws 1995, LB 609, § 5; Laws 2017, LB339, § 15.

3-117 Director; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.

The director, or any officer or employee of the division designated by it, shall have the power to hold investigations, inquiries, and hearings concerning

matters covered by the State Aeronautics Act and orders, rules, and regulations of the division and concerning accidents in aeronautics within this state. All hearings so conducted shall be open to the public. The director, and every officer or employee of the division designated by it to hold any inquiry, investigation, or hearing, shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of a failure to comply with any subpoena or order issued under the authority of the act, the division or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

Source: Laws 1945, c. 5, § 6(11), p. 85; Laws 2017, LB339, § 16.

3-118 Division; reports of investigations or hearings; evidence; how used.

In order to facilitate the making of investigations by the division, in the interest of public safety and the promotion of aeronautics, the public interest requires, and it is, therefor, provided, that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding, growing out of any matter referred to in the investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted on behalf of the division or this state under the State Aeronautics Act and other laws of this state relating to aeronautics, nor shall any member of the commission, the director, or any officer or employee of the division be required to testify to any facts ascertained in, or information gained by reason of, his or her official capacity, or be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. Subject to the foregoing provisions, the division may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

Source: Laws 1945, c. 5, § 6(12), p. 86; Laws 2017, LB339, § 17.

3-119 Division; assist in acquisition, development, operation, or maintenance of airports.

The division may render assistance in the acquisition, development, operation, or maintenance of privately owned public use airports or airports owned, controlled, or operated or to be owned, controlled, or operated by municipalities in this state out of appropriations made by the Legislature for that purpose.

Source: Laws 1945, c. 5, § 6(13), p. 87; Laws 1995, LB 609, § 6; Laws 2017, LB339, § 18.

3-120 Division; contracts; authorized.

The division may enter into any contracts necessary to the execution of the powers granted it by the State Aeronautics Act.

Source: Laws 1945, c. 5, § 6(14), p. 87; Laws 2017, LB339, § 19.

3-121 Division; airway and airport; exclusive right prohibited.

The division shall grant no exclusive right for the use of any airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This section shall not prevent the making of leases in accordance with other provisions of the State Aeronautics Act.

Source: Laws 1945, c. 5, § 6(15), p. 87; Laws 2017, LB339, § 20.

3-123 Division; cooperate with federal government; comply with federal laws.

The division is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal money upon such airports and other navigation facilities.

Source: Laws 1945, c. 5, § 7(1), p. 87; Laws 2017, LB339, § 21.

3-124 Division; acceptance of gifts of money, authorized; terms and conditions.

The division is authorized to accept federal and other money, either public or private, for and on behalf of this state, any municipality, or any person owning a privately owned public use airport, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state, by such municipalities, or by any person owning a privately owned public use airport, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any regulations thereunder. The division may act as agent of any municipality of this state or any person owning a privately owned public use airport, upon the request of such municipality or person, in accepting such money in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal money, and such person or the governing body of any such municipality is authorized to designate the division as its agent for such purposes and to enter into an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with the State Aeronautics Act. Such money as is paid over by the United States Government shall be retained by the state or paid over to the municipalities or persons under such terms and conditions as may be imposed by the United States Government in making such grants.

Source: Laws 1945, c. 5, § 7(2), p. 87; Laws 1995, LB 609, § 7; Laws 2017, LB339, § 22.

3-125 Division; contracts; laws governing.

All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the division, either as the agent of this state, as the agent of any municipality, or as the agent of any person owning a privately owned public use airport, shall be made pursuant to the laws of this state governing the making of like contracts. When the acquisition, construction, improvement, maintenance, and operation of any

airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the division, as agent of the state, of any municipality, or of any person owning a privately owned public use airport, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

Source: Laws 1945, c. 5, § 7(3), p. 88; Laws 1995, LB 609, § 8; Laws 2017, LB339, § 23.

3-126 Aeronautics Cash Fund; created; use; investment.

The Aeronautics Cash Fund is created. All money received by the division pursuant to the State Aeronautics Act shall be remitted to the State Treasurer for credit to the fund. The division is authorized, whether acting for this state, as the agent of any of its municipalities, or as the agent of any person owning a privately owned public use airport, or when requested by the United States Government or any agency or department thereof, to disburse such money. Any money in the Aeronautics 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. The State Treasurer shall transfer any money in the Department of Aeronautics Cash Fund on July 1, 2017, to the Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 7(4), p. 88; Laws 1965, c. 17, § 1, p. 150; Laws 1969, c. 584, § 32, p. 2360; Laws 1978, LB 637, § 1; Laws 1995, LB 7, § 25; Laws 1995, LB 609, § 9; Laws 2009, First Spec. Sess., LB3, § 7; Laws 2017, LB339, § 24.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

3-127 Director; duties.

The director shall (1) administer the State Aeronautics Act, the rules and regulations adopted and promulgated under the act, orders established under the act, and all other laws of the state relative to aeronautics, (2) attend and serve as secretary, but not vote, at all meetings of the commission, (3) appoint, subject to section 3-104, such experts, field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the division and for whose services funds have been appropriated, (4) be in charge of the offices of the division and responsible for the preparation of reports and collection and dissemination of data and other public information relating to aeronautics, and (5) execute all contracts entered into by the division which are legally authorized and for which funds are appropriated.

Source: Laws 1945, c. 5, § 8, p. 89; Laws 2017, LB339, § 25.

3-128 Division; regulation of airports.

In order to safeguard and promote the general public interest and safety, the safety of persons using or traveling in aircraft and of persons and property on the ground, and the interest of aeronautical progress requiring that airports, restricted landing areas, and air navigation facilities be suitable for the purposes for which they are designed and to carry out the purposes of the State

Aeronautics Act, the division may: Recommend airport and restricted landing area sites; license airports, restricted landing areas, or other air navigation facilities; and provide for the renewal and revocation of such licenses in accordance with rules and regulations adopted and promulgated by the division.

Source: Laws 1945, c. 5, § 9(1), p. 89; Laws 1967, c. 12, § 1, p. 98; Laws 1972, LB 285, § 1; Laws 1973, LB 391, § 1; Laws 1973, LB 341, § 1; Laws 1976, LB 460, § 5; Laws 2001, LB 329, § 8; Laws 2017, LB339, § 26.

3-131 License, certificate, permit, or registration; duty to carry, present for inspection, and exhibit.

The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when the airman is operating within this state and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official, manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any other person. The federal aircraft license, certificate, or permit required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted therein where it may readily be seen by passengers or inspectors and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official, manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any person.

Source: Laws 1945, c. 5, § 9(4), p. 92; Laws 1973, LB 341, § 4; Laws 2017, LB339, § 27.

3-133 Airports; license; requirement; approval of site; operation without license unlawful.

Any proposed airport or restricted landing area shall be first licensed by the division before such airport or area shall be used or operated. Any municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to such acquisition, make application to the division for a certificate of approval of the site selected and the general purpose or purposes for which the property is to be acquired, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. It shall be unlawful for any municipality or officer or employee thereof, or for any person, to operate an airport or restricted landing area for which a license has not been issued by the division.

Source: Laws 1945, c. 5, § 9(6), p. 93; Laws 2002, LB 446, § 2; Laws 2017, LB339, § 28.

3-134 Air navigation facility; certificate of approval; hearing; notice; order; license.

Whenever the division makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice

of such order has been sent the applicant by registered or certified mail, demands a public hearing, or whenever the division desires to hold a public hearing, before making an order, such a public hearing in relation thereto shall be held in the municipality applying for the certificate of approval or license or, in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated, or the major portion thereof, if located in more than one county, at which hearing all parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the division in a legal newspaper in or of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made, the order shall be stayed until after the hearing, when the division may affirm, modify, or reverse it, or make a new order. If no hearing is demanded, the order shall become effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the division, it may grant a license for its operation and use, and no hearing may be demanded thereon.

Source: Laws 1945, c. 5, § 9(7), p. 94; Laws 1957, c. 242, § 1, p. 816; Laws 2017, LB339, § 29.

3-135 Air navigation facility; certificate of approval; hearing; standards to be considered.

In determining whether to issue a certificate of approval or license for the use or operation of any proposed airport or restricted landing area, the division shall take into consideration (1) its proposed location, size, and layout, (2) the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development, (3) whether there are safe areas available for expansion purposes, (4) whether the adjoining area is free from obstructions based on a proper glide ratio, (5) the nature of the terrain, (6) the nature of the uses to which the proposed airport or restricted landing area will be put, and (7) the possibilities for future development.

Source: Laws 1945, c. 5, § 9(8), p. 94; Laws 2017, LB339, § 30.

3-137 Air navigation facility; certificate of approval; revocation, grounds.

The division is empowered to temporarily or permanently revoke any certificate of approval or license issued by it when it shall determine that an airport, restricted landing area, or other navigation facility is not being maintained or used in accordance with the State Aeronautics Act and the rules and regulations lawfully adopted and promulgated pursuant thereto.

Source: Laws 1945, c. 5, § 9(10), p. 95; Laws 2017, LB339, § 31.

3-139 Division; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.

If the division refuses to (1) issue a certificate of approval of a license or the renewal of a license for an airport, restricted landing area, or other air navigation facility or (2) permit the registration of any license, certificate, or permit, the division shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permit-

ted, license granted, or order modified or changed. Any order made by the division pursuant to the State Aeronautics Act shall be served upon the interested persons by either registered or certified mail or in person. To carry out the act, the director, officers, and employees of the division and any officers, state or municipal, charged with the duty of enforcing the act may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, restricted landing areas, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

Source: Laws 1945, c. 5, § 10(1), p. 95; Laws 1957, c. 242, § 2, p. 817; Laws 1976, LB 460, § 6; Laws 2017, LB339, § 32.

3-140 Appeal; procedure.

Any person aggrieved by an order of the division or by the granting or denial of any license, certificate, or registration may appeal the order or such granting or denial, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1945, c. 5, § 10(2), p. 96; Laws 1988, LB 352, § 8; Laws 2017, LB339, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

3-141 Division; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.

The division is authorized and empowered, on behalf of and in the name of this state, within the limitation of available appropriations, to (1) acquire, by purchase, gift, devise, lease, condemnation proceedings, or otherwise, real or personal property for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, (2) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas, and other air navigation facilities either within or without this state, (3) make, prior to any such acquisition, investigations, surveys, and plans, (4) erect, install, construct, and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and (5) dispose of any such property, airport, or restricted landing area or any other air navigation facility by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. The division may not, however, acquire or take over any airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of such municipality. The division may erect, equip, operate, and maintain on any airport such buildings and equipment as are necessary and proper to establish, maintain, and conduct such airport and air navigation facilities connected therewith.

Source: Laws 1945, c. 5, § 11(1), p. 96; Laws 2017, LB339, § 34.

3-142 Division; airports; easements; acquire by condemnation.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired

or operated under the State Aeronautics Act, the division may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interest in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of the airports and restricted landing areas and the safe and efficient operation thereof. The division may acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit the right, power, or authority of the state or any municipality to zone property adjacent to any airport or restricted landing area pursuant to any law of this state.

Source: Laws 1945, c. 5, § 11(2), p. 97; Laws 2017, LB339, § 35.

3-143 Division; joint activities; authorized.

The division may engage in all activities jointly with the United States, with other states, with municipalities or other agencies of this state, and with persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 11(3), p. 97; Laws 1995, LB 609, § 10; Laws 2017, LB339, § 36.

3-144 Division; right of eminent domain; procedure.

The division may exercise the right of eminent domain, in the name of the state, for the purpose of acquiring any property which it is authorized to acquire by condemnation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The fact that the property so needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the division by the exercise of the right of eminent domain conferred in the State Aeronautics Act. The division shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. Nothing in the State Aeronautics Act shall be construed as granting to privately owned public use airports the authority to exercise the power of eminent domain nor shall anything in the State Aeronautics Act be construed as granting to the division or any municipality the authority to exercise the right of eminent domain for the purpose of acquiring lands or easements for the sole use or benefit of privately owned public use airports.

Source: Laws 1945, c. 5, § 11(4), p. 97; Laws 1951, c. 101, § 26, p. 458; Laws 1995, LB 609, § 11; Laws 2017, LB339, § 37.

3-145 Division; airport; lease; sell; supplies.

The division may (1) lease, for a term not exceeding ten years, such airports, other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government, the national government, or any department of any such government for operation, (2) lease or assign, for a term not exceeding ten years, to private parties, any municipal or state government, the national government, or any department of any such

government for operation or other use consistent with the purposes of the State Aeronautics Act, space, area, improvements, or equipment on such airports, (3) sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and (4) confer the privilege or concession of supplying, upon the airports, goods, commodities, things, services, and facilities, so long as in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

Source: Laws 1945, c. 5, § 11(5), p. 98; Laws 2017, LB339, § 38.

3-146 Division; rentals; power to determine; charges; lien; enforce.

The division may determine the charges or rental for the use of any properties and the charges for any service or accommodations under its control and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. To enforce the payment of charges, the state shall have a lien which the division may enforce, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property.

Source: Laws 1945, c. 5, § 11(6), p. 98; Laws 2017, LB339, § 39.

3-147 Airports; acquisition of land; purpose.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with any municipality, municipalities, or any person owning a privately owned public use airport; the assistance of this state in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the division are hereby declared to be public and governmental functions exercised for a public purpose and matters of public necessity. Such lands and other property and privileges acquired are declared to be public property.

Source: Laws 1945, c. 5, § 12, p. 99; Laws 1995, LB 609, § 12; Laws 2001, LB 173, § 2; Laws 2017, LB339, § 40.

3-148 Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.

There is hereby imposed a tax of five cents per gallon upon aviation gasoline and a tax of three cents per gallon upon aviation jet fuel purchased for and used in aircraft within the State of Nebraska. Such aircraft tax shall be levied, collected, and refunded in the manner provided in Chapter 66, article 4, with reference to other motor fuel. The State Treasurer shall credit the aircraft tax and fees so collected and remitted to a special fund to be known as the Aircraft Fuel Tax Fund, which fund shall be distributed as provided in this section. The State Treasurer shall make all refunds as provided in sections 3-150 and 3-151

from the fund, and the balance of the aircraft tax shall be credited to the Aeronautics Cash Fund.

For purposes of this section, aviation gasoline means fuel used in aircraft meeting the criteria established for motor vehicle fuel in section 66-482. The terms aviation fuel and aircraft fuel as used in the statutes include both aviation gasoline and aviation jet fuel.

Source: Laws 1945, c. 5, § 13, p. 99; Laws 1947, c. 6, § 1, p. 67; Laws 1965, c. 18, § 1, p. 152; Laws 1965, c. 17, § 2, p. 150; Laws 1965, c. 8, § 8, p. 93; Laws 1985, LB 272, § 1; Laws 1991, LB 627, § 1; Laws 1992, LB 1013, § 1; Laws 2017, LB339, § 41.

3-149 Aircraft fuel tax; collection; violation; penalty.

The suppliers, distributors, wholesalers, and importers defined in Chapter 66, article 4, shall collect the tax as prescribed in section 3-148, keep an account thereof separately from other fuel tax, and remit the tax collected accordingly to the Tax Commissioner. The Tax Commissioner shall remit the tax to the State Treasurer in the same manner as is provided by law for the collection and remittance of motor vehicle fuel tax. No other or different tax shall be imposed for fuel bought for and used in aircraft. Such tax shall be used for the purposes set forth in the State Aeronautics Act. The penalty for violation of the provisions of this section relating to the collection and remittance of the tax shall be the same as set forth for the violation of the law with reference to the motor fuel tax contained in Chapter 66, article 7, and the right of enforcement and the penalties shall be likewise applicable as set forth therein.

Source: Laws 1945, c. 5, § 14, p. 100; Laws 1985, LB 272, § 2; Laws 1991, LB 627, § 2; Laws 1992, LB 1013, § 2; Laws 1994, LB 1160, § 48; Laws 2017, LB339, § 42.

3-152 Violations; penalty.

Any person violating any of the provisions of the State Aeronautics Act, or any of the rules, regulations, or orders adopted, promulgated, or issued pursuant thereto, shall be guilty of a Class II misdemeanor.

Source: Laws 1945, c. 5, § 17, p. 101; Laws 1977, LB 40, § 29; Laws 2017, LB339, § 43.

3-154 Act, how cited.

Sections 3-101 to 3-164 shall be known and may be cited as the State Aeronautics Act.

Source: Laws 1945, c. 5, § 21, p. 101; Laws 2017, LB339, § 44.

3-155 Real property formerly used as army airfields; disposal; conditions.

(1) The division is hereby authorized and directed to dispose of all real property held by the division and formerly used by the United States as army airfields, and which is not required for airport operational use purposes. The division shall seek approval from the Federal Aviation Administration to dispose of such property. The property may be platted and subdivided into lots or parcels to be sold separately so as to obtain the greatest total sale price.

(2) The division shall dedicate the necessary roads for airport access and shall reserve such easements for access, utilities, drainage, and other purposes

as may be necessary or convenient to maintain the airports as operational. The sales may be made subject to such terms, conditions, and restrictions as may be required by the deeds by which such property was conveyed to the State of Nebraska by the Federal Aviation Administration. When approval is received, the division shall have such property appraised by noninterested appraisers qualified to make appraisals based on experience and who have professional status as appraisers of real property. The appraisers shall be selected by the division based on competitive bids received after three weeks' notice of invitation for bids has been published in at least two newspapers of general circulation throughout the state. The notice shall state that the selection shall be made of the lowest and best qualified bidders and that the division reserves the right to reject any and all bids and to readvertise for further bids.

(3) Each appraiser's report shall contain (a) an opinion as to the fair market value of the lands appraised, showing a segregation of actual land value, elements and basis of damage, and depreciated in place value of buildings and improvements, if any, (b) a report of income derived from the land in recent years, (c) the adaptability of the land, including the most profitable or highest and best use, (d) a report of a personal inspection of the lands appraised, including a detailed description of their physical characteristics and conditions, (e) the general history of the property and its environs, and a statement of the character of the area surrounding the land being appraised, indicating any of the favorable and unfavorable influences, (f) a listing of recent sales of similar property in the area, showing seller, purchaser, date of sale, selling price, acreage involved, buildings and improvements involved, if any, and an estimate of the value of such improvements, and if there is a difference in value between comparable sales and the property appraised, a discussion of the difference in value to be included, (g) a listing of recent offerings for sale of property in the same general area, including the property being appraised, if recently offered, and the prices quoted, if any, (h) a trend of land values in the area and current land or real estate market conditions, (i) the actual valuation of real property in the community, (j) the effective date of valuation, (k) a statement of the qualifications of the appraiser including a statement by the appraiser that he or she has no personal interest, present or prospective, in the land being appraised, and (l) the signature of the appraiser and date of report.

(4) Such property shall be sold to the highest bidder, but in no case shall such property be sold at less than the appraised value. Notice of such sale and time and place where the same will be held shall be given as provided in section 72-258. When the highest bid is less than the appraised value, the sale shall be canceled and except for property leased pursuant to section 3-157 the property shall be offered for sale again within one year after the date of the previous offering.

Source: Laws 1969, c. 23, § 1, p. 199; Laws 1971, LB 165, § 1; Laws 1972, LB 1481, § 1; Laws 1978, LB 637, § 2; Laws 1979, LB 187, § 11; Laws 2017, LB339, § 45.

3-156 Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.

The Aeronautics Trust Fund is created. The necessary expenses incurred in the sale of property under section 3-155 shall be paid from the Aeronautics Cash Fund, and the proceeds from the sale of such property shall be credited to

the Aeronautics Trust Fund after reimbursement of costs of sale have been made to the Aeronautics Cash Fund. The net proceeds from the disposal of such property shall be used by the division in conformance with any agreements upon which the Federal Aviation Administration conditions its consent to the sale of the aforementioned land and the quit claim deeds (1) filed in the office of the register of deeds of Dodge County on November 17, 1947, and recorded in Deeds Record 89 on page 342 and September 16, 1948, and recorded in Deeds Record 89 on page 578, (2) filed in the office of the register of deeds of Red Willow County on September 16, 1948, in Deeds Record 71 on page 17, September 14, 1966, in Deeds Record 91 on page 281, and December 17, 1968, in Deeds Record 93 on page 549, (3) filed in the office of the register of deeds of Clay County on November 17, 1947, in Deeds Record 86 on page 561, September 16, 1948, in Deeds Record 87 on page 148, and March 14, 1968, in Deeds Record 95 on page 321, (4) filed in the office of the register of deeds of Fillmore County on September 16, 1948, in Deeds Record 39 on page 229, February 21, 1968, in Deeds Record 25 on page 90, January 26, 1948, in Deeds Record 39 on page 189, September 21, 1948, in Deeds Record 39 on page 236, and February 13, 1968, in Deeds Record 25 on page 83, and (5) filed in the office of the register of deeds of Thayer County on January 31, 1948, in Deeds Record 48 on page 493, September 16, 1948, in Deeds Record 48 on page 581, and December 29, 1967, in Deeds Record 58 on page 531, and the rules and regulations of the Federal Aviation Administration, part 155, adopted December 7, 1962. Any money in the Aeronautics Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer any money in the Department of Aeronautics Trust Fund on July 1, 2017, to the Aeronautics Trust Fund.

Source: Laws 1969, c. 23, § 2, p. 200; Laws 1971, LB 165, § 2; Laws 1995, LB 7, § 26; Laws 2017, LB339, § 46.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

3-157 Division; real property; lease; when; requirements.

The division may lease for a period not exceeding twelve years real property held by the division that has been offered for sale for two consecutive years and has not been sold. The lease shall provide for annual rental payments based on fair rental value. The rental payments shall be deposited in the Aeronautics Cash Fund. The division shall cause reappraisals to be made of the land under lease when it deems it necessary due to changes in buildings or improvements, changes in the land, or for other reasons. The division may, after the expiration of any lease, offer such land for sale by public auction as set forth in section 3-155 or may enter into another lease.

Source: Laws 1978, LB 637, § 3; Laws 1980, LB 896, § 1; Laws 2002, LB 446, § 3; Laws 2017, LB339, § 47.

3-158 Person renting aircraft; insurance information; notice.

Any person who in the ordinary course of his or her business rents an aircraft to another person shall deliver to the renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against loss of

or damage to the hull of the aircraft or liability arising out of the ownership, maintenance, or use of the aircraft. The notice shall contain the name of the person giving the notice and shall be in the form prescribed by rule or regulation which the division shall adopt and promulgate.

Source: Laws 1986, LB 781, § 1; Laws 2017, LB339, § 48.

3-159 Authorization to purchase new aircraft; sale of aircraft.

The Executive Board of the Legislative Council pursuant to the authority granted in Laws 2013, LB194, section 9, commissioned an independent study to enable the Legislature to determine whether the state should purchase or otherwise acquire an aircraft for state purposes and what type of aircraft should be acquired, if any. After completion and review of the study, the Legislature authorized the Department of Aeronautics to purchase a new aircraft in 2014. It is the intent of the Legislature to fund the purchase with General Funds and other funds. The Legislature also directed the department, upon taking possession of a new aircraft, to sell the state's 1982 Piper Cheyenne aircraft, with the proceeds retained for use for preventive maintenance funding for the new aircraft.

Source: Laws 2014, LB1016, § 1; Laws 2017, LB339, § 49.

3-160 Employees of Department of Aeronautics; transfer to Division of Aeronautics; how treated.

On and after July 1, 2017, positions of employment in the Department of Aeronautics related to the powers, duties, and functions transferred pursuant to Laws 2017, LB339, are transferred to the Division of Aeronautics of the Department of Transportation. For purposes of the transition, employees of the Department of Aeronautics shall be considered employees of the Department of Transportation and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the division or the director from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

Source: Laws 2017, LB339, § 50.

3-161 Reference to Department of Aeronautics in contracts or other documents; how construed; contracts and property; how treated.

On and after July 1, 2017, whenever the Department of Aeronautics is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB339, such reference or designation shall apply to such division. All contracts entered into by the Department of Aeronautics prior to July 1, 2017, in connection with the duties and functions transferred to the division are hereby recognized, with the division succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the division for the payments

of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the division for all legal purposes.

Source: Laws 2017, LB339, § 51.

3-162 Actions and proceedings; how treated.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Department of Aeronautics, or the director or any employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Department of Aeronautics to the Division of Aeronautics of the Department of Transportation.

Source: Laws 2017, LB339, § 52.

3-163 Provisions of law; how construed.

On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Department of Aeronautics in connection with duties and functions transferred to the Division of Aeronautics of the Department of Transportation, such law shall be construed as referring to such division.

Source: Laws 2017, LB339, § 53.

3-164 Property of Department of Aeronautics; transfer to Division of Aeronautics; appropriation and salary limit; how treated.

On July 1, 2017, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Department of Aeronautics pertaining to the duties and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB339, shall become the property of such division.

Any appropriation and salary limit provided in any legislative bill enacted by the One Hundred Fifth Legislature, First Session, to Agency No. 17, Department of Aeronautics, in the following program classifications, shall be null and void, and any such amounts are hereby appropriated to Agency No. 27, Department of Transportation: Program No. 26, Administration and Services; Program No. 301, Public Airports; and Program No. 596, State-Owned Aircraft. Any financial obligations of the Department of Aeronautics that remain unpaid as of June 30, 2017, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the Division of Aeronautics of the Department of Transportation from the unexpended balance of appropriations existing in such program classifications on June 30, 2017.

Source: Laws 2017, LB339, § 54.

ARTICLE 2

AIRPORTS AND LANDING FIELDS

Section

- 3-201. Terms, defined.
- 3-201.01. Temporary airports and landing fields; approval; application; purpose of landing area.
- 3-215. Municipality; general powers; rules and regulations; adopt.

- Section
 3-218. Contracts; laws governing.
 3-222. Municipality; terms, defined.
 3-227. Board; powers.
 3-228. Joint agreements; ordinances enacted concurrent with each other; effect; publication.
 3-239. Airport authorities or municipalities; project applications under federal act; approval by division; required; division, act as agent; direct receipt of federal funds; when.

3-201 Terms, defined.

For the purpose of the Revised Airports Act, unless specifically otherwise provided in the act, the definitions of words, terms, and phrases appearing in the State Aeronautics Act are hereby adopted. The following words, terms, and phrases shall in the Revised Airports Act have the meanings given in this section, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires: (1) Municipality means any county, city, or village of this state or any city airport authority established pursuant to the Cities Airport Authorities Act and (2) airport purposes means and includes airport, restricted landing area, and other air navigation facility purposes.

Source: Laws 1945, c. 34, § 1, p. 156; Laws 1957, c. 9, § 13, p. 125; Laws 2003, LB 5, § 1; Laws 2017, LB339, § 55.

Cross References

Cities Airport Authorities Act, see section 3-514.
 For definitions in State Aeronautics Act, see section 3-101.
 State Aeronautics Act, see section 3-154.

3-201.01 Temporary airports and landing fields; approval; application; purpose of landing area.

Any proposed airport, restricted landing area, or other air navigation facility which will be in existence for less than thirty consecutive days shall first be approved by the Division of Aeronautics of the Department of Transportation before any such airport, landing area, or other facility shall be used or operated. Any municipality or person proposing the use of property for such purpose shall first make application for a temporary permit for the site selected and the general purpose or purposes for which the property will be used, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. Designation of the location and approval of sites for the proposed temporary airports, restricted landing areas, and other air navigation facilities as provided in section 3-104 may be delegated to the division by the Nebraska Aeronautics Commission. The provisions of this section shall not apply to restricted landing areas designated for personal use pursuant to section 3-136.

Source: Laws 1976, LB 460, § 8; Laws 2017, LB339, § 56.

3-215 Municipality; general powers; rules and regulations; adopt.

In addition to the general power conferred in the Revised Airports Act and section 18-1502 and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or which has acquired or set apart or may

hereafter acquire or set apart real property for such purpose or purposes, is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or a body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board, or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation, and regulation shall be a responsibility of the municipality;

(2) To adopt and amend all needful rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or without the territorial limits of the municipality; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce the penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For purposes of such management, government, and direction of public use, such part of all highways, roads, streets, avenues, boulevards, and territory as adjoins or lies within five hundred feet of the limits of any airport or restricted landing area acquired or maintained under the Revised Airports Act and section 18-1502 shall be under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They must conform to and be consistent with the laws of this state and the rules and regulations of the Division of Aeronautics of the Department of Transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto;

(3) To lease for a term not exceeding ten years such airports, other air navigation facilities, or real property acquired or set apart for airport purposes to private parties, any municipal or state government, the national government, or any department of any such government for operation; to lease or assign space, area, improvements, or equipment on such airports for a term not exceeding ten years to private parties, any municipal or state government, the national government, or any department of any such government for operation or use consistent with the purposes of the Revised Airports Act and section 18-1502; to sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges or concessions of supplying upon its airports goods, commodities, things, services, and facilities, so long as, in each case, the public is not thereby deprived of its rightful, equal, and uniform use thereof;

(4) To sell or lease any real or personal property, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality,

governing the sale or leasing of similar municipally owned property. The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the sinking fund from which funds have been authorized to be taken to finance such bonds. In the event all the proceeds of such sale are not needed to pay the principal of the bonds remaining unpaid, the remainder shall be paid into the general fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations shall be paid into the general fund of the municipality;

(5) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. To enforce the payment of charges, the municipality shall have a lien and may enforce it, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property; and

(6) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in the Revised Airports Act.

Source: Laws 1945, c. 34, § 8, p. 161; Laws 2017, LB339, § 57.

3-218 Contracts; laws governing.

All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the Division of Aeronautics of the Department of Transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where such acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal money, the municipality or the division as its agent may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder.

Source: Laws 1945, c. 34, § 9(3), p. 164; Laws 2017, LB339, § 58.

3-222 Municipality; terms, defined.

For purposes of sections 3-221 to 3-232 only, unless another intention clearly appears or the context otherwise requires, this state shall be included in the term municipality, and all the powers conferred upon municipalities in the Revised Airports Act and section 18-1502, if not otherwise conferred by law, are hereby conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the governing body of a municipality, that term shall mean, as to the state, the Division of Aeronautics of the Department of Transportation.

Source: Laws 1945, c. 34, § 11(2), p. 165; Laws 2017, LB339, § 59.

3-227 Board; powers.

Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of such municipalities granted by the Revised Airports Act, except as otherwise provided in the act. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by authority of the governing bodies of each of the municipalities involved. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding May 1, of a budget for the ensuing fiscal year. Rules and regulations provided for by subdivision (2) of section 3-215 shall become effective only upon approval of each of the appointing governing bodies and the Division of Aeronautics of the Department of Transportation. No real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, lease, or otherwise, except by authority of all the appointing governing bodies, but the board may lease space, area, or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto, subject to subdivision (3) of section 3-215. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1945, c. 34, § 11(7), p. 166; Laws 2001, LB 173, § 4; Laws 2017, LB339, § 60.

3-228 Joint agreements; ordinances enacted concurrent with each other; effect; publication.

Each municipality, acting jointly with another, pursuant to the Revised Airports Act, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by subdivision (2) of section 3-215, and to fix by such ordinances penalties for the violation thereof. Such ordinances, when so concurrently adopted, shall have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or without the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in like manner as are its individual ordinances. The consent of the Division of Aeronautics of the Department of Transportation to any such ordinance, where the state is a party to the joint venture, shall be equivalent to the enactment of the ordinance by a municipality. The publication provided for in subdivision (2) of section 3-215 shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

Source: Laws 1945, c. 34, § 11(8), p. 167; Laws 2017, LB339, § 61.

3-239 Airport authorities or municipalities; project applications under federal act; approval by division; required; division, act as agent; direct receipt of federal funds; when.

(1) No city airport authority, county airport authority, joint airport authority, or municipality in this state, whether acting alone or jointly with another city airport authority, county airport authority, joint airport authority, or municipality, or with the state, shall submit to any federal agency or department any project application under the provisions of any act of Congress which provides

airport planning or airport construction and development funds for the expansion and improvement of the airport system, unless the project and the project application have been first approved by the Division of Aeronautics of the Department of Transportation.

(2) Except as provided in subsection (3) of this section, no city airport authority, county airport authority, joint airport authority, or municipality shall directly accept, receive, receipt for, or disburse any funds granted by the United States under any act of Congress pursuant to subsection (1) of this section, but it shall designate the division as its agent and in its behalf to accept, receive, receipt for, and disburse such funds. Such authorities and municipalities shall enter into an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations, and applicable laws of this state. Such money as is paid by the United States shall be retained by the state or paid over to the city airport authority, county airport authority, joint airport authority, or municipality under such terms and conditions as may be imposed by the United States in making such grant.

(3) Any city airport authority, county airport authority, joint airport authority, or municipality operating a primary airport may directly accept, receive, receipt for, and disburse any funds granted by the United States for the primary airport under the provisions of any act of Congress pursuant to subsection (1) of this section by informing the division, in writing, of its intent to do so. If an airport loses its status as a primary airport before signing a grant agreement with the United States, the airport shall be subject to subsection (2) of this section.

(4) For purposes of this section:

(a) City airport authority means an authority established pursuant to the Cities Airport Authorities Act;

(b) County airport authority means an authority established under sections 3-601 to 3-622;

(c) Joint airport authority means an authority established under the Joint Airport Authorities Act;

(d) Municipality means any county, city, or village of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities; and

(e) Primary airport means any airport which:

(i) Receives scheduled passenger air service;

(ii) Has at least ten thousand revenue passenger enplanements or boardings, as officially recorded by the United States, in at least one of the most recent five calendar years for which official numbers are available; and

(iii) Does not receive any funds apportioned by the United States for nonprimary airports.

Source: Laws 1947, c. 8, § 1, p. 70; Laws 1957, c. 9, § 15, p. 126; Laws 1980, LB 925, § 1; Laws 2002, LB 446, § 4; Laws 2017, LB339, § 62.

Cross References

Cities Airport Authorities Act, see section 3-514.

Joint Airport Authorities Act, see section 3-716.

ARTICLE 3
AIRPORT ZONING

Section

- 3-301. Terms, defined.
- 3-302. Airport hazard; public nuisance; prevention.
- 3-303. Airport hazard; zoning regulations; modifications and exceptions.
- 3-304. Joint airport zoning board; airport zoning regulation; filing.
- 3-304.01. Joint airport zoning board; members; term.
- 3-306. Zoning regulations; conflict; stringent limitation or requirement prevails.
- 3-307. Zoning regulations; adoption; notice; hearing.
- 3-308. Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.
- 3-309. Zoning regulations; requirements; reasonable.
- 3-310. Zoning regulations; nonconforming use; exception.
- 3-311. Zoning regulations; new or changed structure; nonconforming use; permit.
- 3-312. Zoning regulations; property inconsistent with regulations; variance; allowance; exception.
- 3-313. Zoning regulations; permit or variance; hazard marking and lighting.
- 3-314. Transferred to section 3-319.01.
- 3-315. Repealed. Laws 2013, LB 140, § 23.
- 3-316. Repealed. Laws 2013, LB 140, § 23.
- 3-317. Repealed. Laws 2013, LB 140, § 23.
- 3-318. Repealed. Laws 2013, LB 140, § 23.
- 3-319. Zoning regulations; provide for administration and enforcement.
- 3-319.01. Zoning regulations; appeal; hearing; procedure; board; duties.
- 3-320. Zoning regulations; board of adjustment; members; terms; powers.
- 3-321. Repealed. Laws 2013, LB 140, § 23.
- 3-322. Repealed. Laws 2013, LB 140, § 23.
- 3-324. Board of adjustment; judicial review; petition; grounds.
- 3-325. Repealed. Laws 2013, LB 140, § 23.
- 3-326. Repealed. Laws 2013, LB 140, § 23.
- 3-327. Repealed. Laws 2013, LB 140, § 23.
- 3-329. Judicial review; effect of decision on other structures.
- 3-330. Violation; penalty; injunctions.
- 3-331. Acquisition of property interest; purchase; grant; condemnation; procedure.
- 3-332. Division of Aeronautics; municipalities and political subdivisions; assist in planning and developing.
- 3-333. Act, how cited.

3-301 Terms, defined.

For purposes of the Airport Zoning Act, unless the context otherwise requires:

(1)(a) Airport means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and includes any related buildings and facilities;

(b) Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans;

(2) Airport hazard means any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone;

(3) Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones;

(4) Airport layout plan means a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines;

(5) Approach zone means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines. Approach zone dimensions are as follows:

(a) For an existing or proposed instrument runway:

(i) An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand feet wide at the end of the zone nearest the runway and expands uniformly to sixteen thousand eight hundred forty feet wide at the farthest end of the zone; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every fifty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally and continues to the ten-mile limit; and

(b) For an existing or proposed visual runway:

(i) An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is three thousand seven hundred feet wide; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every forty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end;

(6) Electric facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers;

(7) Existing runway means an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction;

(8) Instrument runway means an existing runway with precision or nonprecision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or nonprecision instrument approaches reflected on the airport layout plan. After September 6, 2013, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation;

(9) Operation zone means a zone that is longitudinally centered on each existing or proposed runway. Operation zone dimensions are as follows:

(a) For existing and proposed paved runways, the operation zone extends two hundred feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;

(b) For existing and proposed instrument runways, the operation zone is one thousand feet wide, with five hundred feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is five hundred feet wide, with two hundred fifty feet on either side of the runway centerline; and

(c) The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or the surface of the ground, whichever is higher;

(10) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(11) Political subdivision means any municipality, city, village, or county;

(12) Proposed runway means an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration;

(13) Runway means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

(14) Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines;

(15) Transition zone means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway;

(16) Tree means any object of natural growth;

(17) Turning zone's outer limit means the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway; and

(18) Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

Source: Laws 1945, c. 233, § 1, p. 682; Laws 1993, LB 121, § 84; Laws 2013, LB140, § 1.

3-302 Airport hazard; public nuisance; prevention.

(1) It is hereby found that an airport hazard endangers the lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared that (a) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question, (b) it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented, and (c) the prevention of airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

Source: Laws 1945, c. 233, § 2, p. 683; Laws 2013, LB140, § 2.

3-303 Airport hazard; zoning regulations; modifications and exceptions.

In order to prevent the creation or establishment of airport hazards, every political subdivision that has an airport hazard area within the area of its zoning jurisdiction shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in the Airport Zoning Act, airport zoning regulations for such airport hazard area. The regulations shall meet the minimum regulations as prescribed by the Division of Aeronautics of the Department of Transportation and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, except that a political subdivision or a joint airport zoning board provided for in section 3-304 may include modifications or exceptions to the airport zoning regulations adopted under the Airport Zoning Act that the political subdivision or joint airport zoning board deems appropriate. Such modifications and exceptions shall not be considered a conflict for purposes of section 3-306. The authority of a political subdivision to adopt airport zoning regulations shall not be conditional upon prior adoption of a comprehensive development plan or a comprehensive zoning ordinance.

Source: Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96; Laws 2010, LB512, § 1; Laws 2013, LB140, § 3; Laws 2017, LB339, § 63.

3-304 Joint airport zoning board; airport zoning regulation; filing.

If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside of the political subdivision's zoning jurisdiction, the political subdivision owning or controlling the airport and the political subdivision or political subdivisions within whose zoning jurisdiction the airport hazard area or areas are located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, by resolution approved by a majority of the board, airport zoning regulations applicable to an airport

hazard area as that vested by section 3-303 in any political subdivision within whose zoning jurisdiction such area is located. Any airport zoning regulation, or any amendment thereto, adopted by a joint airport zoning board shall be filed with the official or administrative agency responsible for the enforcement of zoning regulations in each of the political subdivisions participating in the creation of the joint airport zoning board and shall be enforced as provided in section 3-319.

Source: Laws 1945, c. 233, § 3(2), p. 683; Laws 1961, c. 9, § 2, p. 96; Laws 1984, LB 837, § 1; Laws 2010, LB512, § 2; Laws 2013, LB140, § 4.

3-304.01 Joint airport zoning board; members; term.

If a joint airport zoning board is created pursuant to section 3-304, such board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years.

Source: Laws 2013, LB140, § 5.

3-306 Zoning regulations; conflict; stringent limitation or requirement prevails.

In the event of any conflict between any airport zoning regulations adopted under the Airport Zoning Act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1945, c. 233, § 4(2), p. 684; Laws 2013, LB140, § 6.

3-307 Zoning regulations; adoption; notice; hearing.

No airport zoning regulations shall be adopted, amended, or changed under the Airport Zoning Act except by the action of the legislative body of the political subdivision in question, or the joint airport zoning board provided for in section 3-304, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport hazard area is located.

Source: Laws 1945, c. 233, § 5(1), p. 684; Laws 2013, LB140, § 7.

3-308 Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.

Prior to the initial zoning of any airport hazard area under the Airport Zoning Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting

its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. If a city or county planning commission or a joint or interjurisdictional planning commission already exists, it may be appointed as the airport zoning commission.

Source: Laws 1945, c. 233, § 5(2), p. 685; Laws 2013, LB140, § 8.

3-309 Zoning regulations; requirements; reasonable.

All airport zoning regulations adopted under the Airport Zoning Act shall be reasonable and not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of the act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable. If an airport layout plan has been submitted for approval to the Federal Aviation Administration with a proposed instrument runway depicted thereon and such airport layout plan is conditionally or unconditionally approved without such proposed instrument runway, the political subdivision shall adopt or revise, as necessary, airport zoning regulations to protect any approach zone for a visual runway only.

Source: Laws 1945, c. 233, § 6(1), p. 685; Laws 2013, LB140, § 9.

3-310 Zoning regulations; nonconforming use; exception.

(1) No airport zoning regulations adopted under the Airport Zoning Act shall require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section 3-311.

(2) Any structure that has not yet been constructed but that has received, prior to August 1, 2013, zoning approval from the political subdivision exercising zoning jurisdiction over such structure may be constructed and shall thereafter be considered an existing structure for purposes of this section.

Source: Laws 1945, c. 233, § 6(2), p. 685; Laws 2013, LB140, § 10.

3-311 Zoning regulations; new or changed structure; nonconforming use; permit.

(1) Airport zoning regulations adopted under the Airport Zoning Act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered, or repaired.

(2) Except as provided in subsection (3) of this section for certain electric facilities, all airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair,

reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

(3) An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

Source: Laws 1945, c. 233, § 7(1), p. 685; Laws 2013, LB140, § 11.

3-312 Zoning regulations; property inconsistent with regulations; variance; allowance; exception.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under the Airport Zoning Act may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection (2) of section 19-910, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of the act.

Source: Laws 1945, c. 233, § 7(2), p. 686; Laws 2013, LB140, § 12.

3-313 Zoning regulations; permit or variance; hazard marking and lighting.

In granting any permit under or variance from any airport zoning regulation adopted under the Airport Zoning Act, the administrative agency or board of adjustment may, if it deems it advisable to effectuate the purposes of the act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political

subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: Laws 1945, c. 233, § 7(3), p. 686; Laws 2013, LB140, § 13.

3-314 Transferred to section 3-319.01.

3-315 Repealed. Laws 2013, LB 140, § 23.

3-316 Repealed. Laws 2013, LB 140, § 23.

3-317 Repealed. Laws 2013, LB 140, § 23.

3-318 Repealed. Laws 2013, LB 140, § 23.

3-319 Zoning regulations; provide for administration and enforcement.

All airport zoning regulations adopted under the Airport Zoning Act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations. In the case of airport zoning regulations adopted by a joint airport zoning board, each of the political subdivisions which participated in the creation of the joint airport zoning board shall create or designate an official or an administrative agency to administer and enforce the airport zoning regulations within its respective zoning jurisdiction. The duties of any official or administrative agency designated pursuant to the act shall include that of reviewing and acting upon all applications for permits under the airport zoning regulations, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. In no event shall such official or administrative agency be or include any member of the board of adjustment.

Source: Laws 1945, c. 233, § 9, p. 687; Laws 2013, LB140, § 14.

3-319.01 Zoning regulations; appeal; hearing; procedure; board; duties.

(1) Any person aggrieved or taxpayer affected by any decision of an administrative agency made in its administration of airport zoning regulations adopted under the Airport Zoning Act, or any governing body of a political subdivision which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) Any appeal taken under this section shall be taken within a reasonable amount of time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay any proceeding in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases the proceedings shall not be stayed except by an

order of the board after notice to the agency from which the appeal is taken and upon due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice thereof, give due notice to the parties in interest, and decide the appeal within sixty days after the date of filing such appeal. Any party may appear in person or by an agent or attorney at the hearing.

Source: Laws 1945, c. 233, § 8(1), p. 686; R.S.1943, (2012), § 3-314; Laws 2013, LB140, § 15.

3-320 Zoning regulations; board of adjustment; members; terms; powers.

(1) All airport zoning regulations adopted under the Airport Zoning Act shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations;

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations; and

(c) To hear and decide petitions for variances from the strict application of airport zoning regulations.

(2) A board of adjustment shall consist of five regular members, each to be appointed for a term of three years by the political subdivision or joint airport zoning board adopting the regulations. Any member thereof may be removed by the appointing authority for cause, upon written charges and after a public hearing. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the administrative agency or to decide in favor of the applicant on any matter upon which the board is required to pass under the airport zoning regulations or to effect any variation in such regulations.

(3) The board of adjustment may, consistent with the Airport Zoning Act, reverse or affirm wholly or partly or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as it deems right and proper under the circumstances.

(4) A board of adjustment, board of zoning appeals, or similar zoning appeals board that exists on September 6, 2013, may be designated as and shall exercise the power of the board of adjustment for airport zoning regulations as required by this section.

Source: Laws 1945, c. 233, § 10(1), p. 688; Laws 2013, LB140, § 16.

3-321 Repealed. Laws 2013, LB 140, § 23.

3-322 Repealed. Laws 2013, LB 140, § 23.

3-324 Board of adjustment; judicial review; petition; grounds.

Any (1) person aggrieved or taxpayer affected by any decision of a board of adjustment, (2) governing body of a political subdivision, or (3) joint airport zoning board, which is of the opinion that a decision of a board of adjustment is arbitrary or capricious, illegal, or unsupported by evidence, may obtain judicial

review of such decision by filing a petition in error in the district court of the county in which the structure or tree that is the subject of the decision is located. The filing of and proceeding on the petition in error shall be in accordance with sections 25-1901 to 25-1937.

Source: Laws 1945, c. 233, § 11(1), p. 689; Laws 2013, LB140, § 17.

3-325 Repealed. Laws 2013, LB 140, § 23.

3-326 Repealed. Laws 2013, LB 140, § 23.

3-327 Repealed. Laws 2013, LB 140, § 23.

3-329 Judicial review; effect of decision on other structures.

In any case in which airport zoning regulations adopted under the Airport Zoning Act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the Constitution of Nebraska or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Source: Laws 1945, c. 233, § 11(6), p. 690; Laws 2013, LB140, § 18.

3-330 Violation; penalty; injunctions.

Each violation of the Airport Zoning Act or of any regulations, orders, or rulings promulgated or made pursuant to the act shall constitute a Class IV misdemeanor. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under the act may institute, in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of (1) the act, (2) airport zoning regulations adopted under the act, or (3) any order or ruling made in connection with the administration or enforcement of the act or such regulations. The court in such proceedings shall adjudge to the plaintiff such relief by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of the act and of the regulations adopted and orders and rulings made pursuant thereto.

Source: Laws 1945, c. 233, § 12, p. 690; Laws 1977, LB 40, § 30; Laws 2013, LB140, § 19.

3-331 Acquisition of property interest; purchase; grant; condemnation; procedure.

In any case in which (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use, (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under the Airport Zoning Act, or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning or operating the airport or served by it may acquire by purchase, grant, or condemnation, such air right, aviation easement, or other estate or interest

in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of the act. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 233, § 13, p. 691; Laws 1951, c. 101, § 30, p. 460; Laws 2013, LB140, § 20.

3-332 Division of Aeronautics; municipalities and political subdivisions; assist in planning and developing.

The Division of Aeronautics of the Department of Transportation may aid and assist municipalities and other political subdivisions of the state in planning, developing, and carrying out programs for airport zoning in order to secure uniformity therein as far as possible.

Source: Laws 1945, c. 233, § 16, p. 691; Laws 2017, LB339, § 64.

3-333 Act, how cited.

Sections 3-301 to 3-333 shall be known and may be cited as the Airport Zoning Act.

Source: Laws 1945, c. 233, § 15, p. 691; Laws 2013, LB140, § 21.

**ARTICLE 4
REGULATION OF STRUCTURES**

Section

- 3-402. Terms, defined.
- 3-403. Structures; erection, maintenance in excess of one hundred fifty feet; permit required.
- 3-404. Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations; Nebraska National Guard; duties.
- 3-405. Appeal; procedure.
- 3-407. Structures; lighting; rules and regulations; division adopt.
- 3-407.01. Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.
- 3-408. Violations; penalty.
- 3-409. Structure; violations; injunction; removal.

3-402 Terms, defined.

As used in sections 3-401 to 3-409, unless the context otherwise requires:

(1) Meteorological evaluation tower means an anchored structure, including all guy wires and accessory facilities, on which one or more meteorological instruments are mounted for the purpose of meteorological data collection;

(2) Obstruction means any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area;

(3) Person means any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company;

(4) Structure means any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys; and

(5) Terrain flight training area means an area established by the Nebraska National Guard within which military and related flight training is conducted using rotary-wing aircraft and which existed as of July 19, 2018.

Source: Laws 1955, c. 7, § 2, p. 68; Laws 1993, LB 121, § 85; Laws 2015, LB469, § 5; Laws 2018, LB901, § 1.
Effective date July 19, 2018.

3-403 Structures; erection, maintenance in excess of one hundred fifty feet; permit required.

It shall be unlawful for any person, firm, or corporation, without having first applied for and obtained a permit in writing from the Division of Aeronautics of the Department of Transportation, to build, erect, or maintain any structure within the State of Nebraska, the height of which exceeds one hundred fifty feet above the surface of the ground at point of installation.

Source: Laws 1955, c. 7, § 3, p. 68; Laws 1963, c. 17, § 1, p. 96; Laws 2017, LB339, § 65.

3-404 Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations; Nebraska National Guard; duties.

(1) The application for the permit required by section 3-403 shall be made in writing on forms prescribed by the Division of Aeronautics of the Department of Transportation and shall contain or be accompanied by details as to the location, construction, height, and dimensions of the proposed structure, the nature of its intended use, and such other information as the Director of Aeronautics may require. If the proposed structure is proposed to be built inside the boundaries of or within one thousand meters of the boundaries of any terrain flight training area, the application for a permit shall be accompanied by a written mitigation agreement between the applicant and the Nebraska National Guard.

(2) Upon the filing of an application, the director shall make an investigation and an aeronautical study of such proposed construction and its effect, if any, upon air navigation, and the health, welfare, and safety of the public. In making such investigation and aeronautical study and making his or her determination under this section, the director shall consider (a) the character of flying operations expected to be conducted in the area concerned, (b) the nature of the terrain, (c) the character of the neighborhood, (d) the uses to which the property concerned is devoted or adaptable, (e) the proximity to existing airports, airways, control areas, and control zones, (f) the height of existing adjacent structures, and (g) all the facts and circumstances existing at the time of application.

(3) If the director, upon such investigation, determines that such proposed structure will not constitute a hazard to air navigation and will not interfere unduly with the public right of freedom of transit in commerce through the air space affected thereby, the director shall issue to the applicant a permit, required by section 3-403, authorizing the erection and construction of such structure, subject to such conditions as to marking and lighting as the division may prescribe by its rules and regulations, authorized by section 3-407. The director shall impose only such restrictions or requirements as may be reason-

ably necessary to effectuate sections 3-401 to 3-409. If the director does not so determine, the director shall deny the application.

(4) On or before August 1, 2018, the Nebraska National Guard shall provide the Division of Aeronautics of the Department of Transportation a description of the boundaries of the terrain flight training areas by metes and bounds or an official map that shows the boundaries of the terrain flight training areas. The description or map shall be used by the division in its management of the airspace of the State of Nebraska pursuant to sections 3-401 to 3-409.

Source: Laws 1955, c. 7, § 4, p. 68; Laws 2017, LB339, § 66; Laws 2018, LB901, § 2.
Effective date July 19, 2018.

3-405 Appeal; procedure.

Any person aggrieved by any action of the Division of Aeronautics of the Department of Transportation in granting or denying a permit under the terms of sections 3-401 to 3-409 may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1955, c. 7, § 5, p. 69; Laws 1988, LB 352, § 9; Laws 2017, LB339, § 67.

Cross References

Administrative Procedure Act, see section 84-920.

3-407 Structures; lighting; rules and regulations; division adopt.

All structures outside the corporate limits of cities and villages, exceeding a height of two hundred feet above the surface of the ground, and all structures within the corporate limits of cities and villages exceeding a height of five hundred feet shall be marked and lighted in accordance with rules and regulations adopted and promulgated by the Division of Aeronautics of the Department of Transportation. The division may adopt and promulgate rules and regulations for the marking and lighting of such structures in a manner calculated to prevent collisions with such structures by aircraft. It shall be the duty of the persons, firms, and corporations owning, maintaining, or using such structures to provide and maintain such marking and lighting.

Source: Laws 1955, c. 7, § 7, p. 70; Laws 1993, LB 472, § 1; Laws 2017, LB339, § 68.

3-407.01 Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.

(1) A meteorological evaluation tower, the height of which is at least fifty feet above the surface of the ground at point of installation, shall be marked according to subsection (2) of this section. This section applies to a meteorological evaluation tower that is located outside the corporate limits of a city or village.

(2) A meteorological evaluation tower described in subsection (1) of this section shall: (a) Be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base; (b) have two or more spherical marker balls at least twenty-one inches in diameter that are aviation orange in color and attached to each outer guy wire connected to the tower with the top ball no

further than twenty feet from the top wire connection and the remaining ball or balls at or below the midpoint of the tower on the outer guy wires; and (c) have yellow safety sleeves installed on each outer guy wire extending at least fourteen feet above the anchor point of the guy wire.

(3) The owner of a meteorological evaluation tower subject to this section shall, not less than ten business days prior to erecting the tower, register with the Division of Aeronautics of the Department of Transportation the name and address of the owner, the height and location of the tower, and any other information that the division deems necessary for aviation safety. The owner of a tower subject to this section shall also report the removal of the tower to the division not more than thirty business days after its removal. The division shall make the information received pursuant to this subsection available to the public within five business days.

(4) The owner of a meteorological evaluation tower described in subsection (1) of this section that was erected prior to May 28, 2015, and which is either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet, shall mark the tower as required by subsection (2) of this section within two years after May 28, 2015, or at such time the tower is taken down for maintenance or other purposes, whichever comes first, except that the owner of a tower erected prior to May 28, 2015, which is not lighted, marked, painted, or modified as described in this subsection shall mark such tower as required by subsection (2) of this section within ninety days after May 28, 2015. The registration requirements of subsection (3) of this section shall be performed by the owner of a tower erected prior to May 28, 2015, within fifteen business days after May 28, 2015.

(5) A material failure to comply with the marking and registration requirements of this section shall be admissible as evidence of negligence on the part of an owner of a meteorological evaluation tower in an action in tort for property damage, bodily injury, or death resulting from an aerial collision with such unmarked or unregistered tower.

(6) The division may adopt and promulgate rules and regulations for carrying out the purposes of this section.

Source: Laws 2015, LB469, § 6; Laws 2017, LB339, § 69.

3-408 Violations; penalty.

Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409, (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted and promulgated by the Division of Aeronautics of the Department of Transportation pursuant to sections 3-401 to 3-409, (4) failing to do and perform any act required by sections 3-401 to 3-409, or (5) violating the terms of any permit issued pursuant to sections 3-401 to 3-409, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of sections 3-401 to 3-409 shall continue in existence shall constitute a separate offense.

Source: Laws 1955, c. 7, § 8, p. 70; Laws 1977, LB 40, § 31; Laws 2015, LB469, § 7; Laws 2017, LB339, § 70.

3-409 Structure; violations; injunction; removal.

In addition to the penalties provided for by section 3-408, the erection and maintenance of any structure in violation of sections 3-401 to 3-409 may be enjoined by any court of competent jurisdiction in an action for that purpose commenced by the Division of Aeronautics of the Department of Transportation or any other interested person. The erection of such structure and permitting the same to stand or remain, in violation of sections 3-401 to 3-409, is hereby declared to be a nuisance and the division, or its authorized agent, is authorized to go upon the premises and abate such nuisance by removing such structure after five days' notice to the interested parties, to be served by mail addressed to them at their last-known place of business or residence. The expense incident to the removal of such structure shall be paid by the owners thereof, and if the division removes such structures as provided in this section, the expense incurred by the division may be recovered from the sale of the structure or its salvage material.

Source: Laws 1955, c. 7, § 9, p. 71; Laws 2017, LB339, § 71.

ARTICLE 5

CITY AIRPORT AUTHORITY

Section

3-502. Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

3-502 Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

(1) Any city may create an airport authority to be managed and controlled by a board. The board, when and if appointed, shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such city for the purpose of aviation operation, air navigation, and air safety operation.

(2) The Cities Airport Authorities Act shall not become operative as to any city unless the mayor and city council in their discretion activate the airport authority by the mayor appointing and the council approving the board members as provided in this section. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the city for which such board is established.

(3) Each board in cities of the primary, first, and second classes and in villages shall consist of five members to be appointed by the mayor with the approval of the city council to serve until their successors elected pursuant to section 32-547 take office. Members of such board shall be residents of the city for which such authority is created. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, to serve the unexpired portion of the term. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of such officer may be brought, upon resolution of the city council, in the district court of the county in which such city is located.

(4) Each board in cities of the metropolitan class shall consist of five members who shall be nominated by the mayor and approved by the city council and shall serve for terms of five years. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, and such appointee shall serve the unexpired portion of the term of the member

whose office was vacated. Any member of such board may be removed from office by the mayor, for incompetence, neglect of duty, or malfeasance in office, with the consent and approval of the city council.

(5) The members of the board hereby created shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the Cities Airport Authorities Act, to be paid as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper.

(6) The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the city. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the city.

Source: Laws 1957, c. 9, § 2, p. 111; Laws 1959, c. 12, § 1, p. 120; Laws 1965, c. 19, § 1, p. 153; Laws 1967, c. 14, § 1, p. 102; Laws 1967, c. 15, § 1, p. 106; Laws 1969, c. 25, § 1, p. 218; Laws 1971, LB 164, § 1; Laws 1972, LB 661, § 1; Laws 1977, LB 201, § 1; Laws 1981, LB 204, § 13; Laws 1988, LB 975, § 1; Laws 1994, LB 76, § 461; Laws 2013, LB87, § 1.

ARTICLE 6

COUNTY AIRPORT AUTHORITY

Section

3-613. Authority; powers.

3-613 Authority; powers.

Any authority established under sections 3-601 to 3-622 shall have power:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at pleasure;
- (3) To acquire, hold, and dispose of personal property for its corporate purposes;
- (4) To acquire in the name of the county, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except as may otherwise be provided in such sections, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more

appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the county, to use the services of agents, employees, and facilities of the county, for which the authority may reimburse the county a proper proportion of the compensation or cost thereof, and also to use the services of the county attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the county in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To annually request of the county board the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such county. Property tax levies for bonds issued by the authority pursuant to section 3-617 are not included in the levy limits established by this subdivision. The governing body shall levy and collect the taxes so requested at the same time and in the same manner as other 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 authority is deposited;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such period of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the county in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by sections 3-601 to 3-622.

Source: Laws 1969, c. 141, § 13, p. 653; Laws 1973, LB 22, § 4; Laws 1977, LB 40, § 33; Laws 1979, LB 187, § 16; Laws 1992, LB 719A, § 14; Laws 1996, LB 1114, § 21; Laws 1997, LB 269, § 6; Laws 2001, LB 173, § 7; Laws 2016, LB774, § 1.

ARTICLE 8

NEBRASKA STATE AIRLINE AUTHORITY

Section

- 3-801. Repealed. Laws 2013, LB 78, § 23.
- 3-802. Repealed. Laws 2013, LB 78, § 23.
- 3-803. Repealed. Laws 2013, LB 78, § 23.
- 3-804. Repealed. Laws 2013, LB 78, § 23.
- 3-805. Repealed. Laws 2013, LB 78, § 23.

3-801 Repealed. Laws 2013, LB 78, § 23.

3-802 Repealed. Laws 2013, LB 78, § 23.

3-803 Repealed. Laws 2013, LB 78, § 23.

3-804 Repealed. Laws 2013, LB 78, § 23.

3-805 Repealed. Laws 2013, LB 78, § 23.

CHAPTER 4

ALIENS

Section

- 4-111. Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.
- 4-112. Public benefits; applicant; eligibility; verification; presumption.

4-111 Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.

(1) Verification of lawful presence in the United States pursuant to section 4-108 requires that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that:

(a) He or she is a United States citizen; or

(b) He or she 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.

(2) A state agency or political subdivision of the State of Nebraska may adopt and promulgate rules and regulations or procedures for the electronic filing of the attestation required under subsection (1) of this section if such attestation is substantially similar to the format prescribed by the Department of Administrative Services.

(3)(a) The Legislature finds that it is in the best interest of the State of Nebraska to make full use of the skills and talents in the state by ensuring that a person who is work-authorized is able to obtain a professional or commercial license and practice his or her profession.

(b) For purposes of a professional or commercial license, the Legislature finds that a person not described in subdivision (1)(a) or (1)(b) of this section who submits (i) an unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766, and (ii) documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or any other federal agency, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that such person is described in section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13, has demonstrated lawful presence pursuant to section 4-108 and is eligible to obtain such license. Such license shall be valid only for the period of time during which such person's employment authorization document is valid. Nothing in this subsection shall affect the requirements to obtain a professional or commercial license that are unrelated to the lawful presence requirements demonstrated pursuant to this subsection.

(c) Nothing in this subsection shall be construed to grant eligibility for any public benefits other than obtaining a professional or commercial license.

(d) Any person who has complied with the requirements of this subsection shall have his or her employment authorization document verified through the Systematic Alien Verification for Entitlements Program operated by the United

States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security.

(e) The Legislature enacts this subsection pursuant to the authority provided in 8 U.S.C. 1621(d), as such section existed on January 1, 2016.

Source: Laws 2009, LB403, § 4; Laws 2016, LB947, § 1.

4-112 Public benefits; applicant; eligibility; verification; presumption.

For any applicant who has executed a document described in subdivision (1)(b) of section 4-111, eligibility for public benefits shall be verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such verification of eligibility is made, such attestation may be presumed to be proof of lawful presence for purposes of sections 4-108 to 4-113 unless such verification is required before providing the public benefit under another provision of state or federal law.

Source: Laws 2009, LB403, § 5; Laws 2016, LB947, § 2.

CHAPTER 7

ATTORNEYS AT LAW

Article.

2. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. 7-201 to 7-210.

ARTICLE 2

LEGAL EDUCATION FOR PUBLIC SERVICE AND RURAL PRACTICE LOAN REPAYMENT ASSISTANCE ACT

Section

- 7-201. Act, how cited.
- 7-202. Legislative findings.
- 7-203. Terms, defined.
- 7-204. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board; created; members.
- 7-206. Legal education for public legal service and rural practice loan repayment assistance program; rules and regulations; contents.
- 7-207. Commission on Public Advocacy; applications; board; recommendations; certification of recipients.
- 7-208. Commission on Public Advocacy; solicit and receive donations.
- 7-209. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.
- 7-210. Commission on Public Advocacy; identify designated legal profession shortage areas; considerations.

7-201 Act, how cited.

Sections 7-201 to 7-210 shall be known and may be cited as the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act.

Source: Laws 2008, LB1014, § 19; Laws 2014, LB907, § 1.

7-202 Legislative findings.

The Legislature finds that many attorneys graduate from law school with substantial educational debt that prohibits many from considering public legal service work or work in less-populated rural areas of Nebraska. A need exists for public legal service entities and rural clients to hire competent attorneys. The public is better served by competent and qualified attorneys working in the area of public legal service and serving underserved rural areas. Programs providing educational loan repayment assistance will encourage law students and other attorneys to seek employment in the area of public legal service and in designated legal profession shortage areas in rural Nebraska and will enable public legal service entities and rural communities to attract and retain qualified attorneys.

Source: Laws 2008, LB1014, § 20; Laws 2014, LB907, § 2.

7-203 Terms, defined.

For purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act:

(1) Board means the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board;

(2) Designated legal profession shortage area means a rural area located within any county in Nebraska having a population of less than fifteen thousand inhabitants and not included within a metropolitan statistical area as defined by the United States Department of Commerce, Bureau of the Census, and determined by the board to be underserved by available legal representation;

(3) Educational loans means loans received as an educational benefit, scholarship, or stipend toward a juris doctorate degree and either (a) made, insured, or guaranteed by a governmental unit or (b) made under a program funded in whole or in part by a governmental unit or nonprofit institution; and

(4) Public legal service means providing legal service to indigent persons while employed by a tax-exempt charitable organization.

Source: Laws 2008, LB1014, § 21; Laws 2014, LB907, § 3.

7-204 Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board; created; members.

The Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board is created. The board shall consist of the director of Legal Aid of Nebraska, the deans of Creighton School of Law and the University of Nebraska College of Law, a student from each law school selected by the dean of the law school, at least one of whom intends to work for a tax-exempt charitable organization primarily doing public legal service and at least one of whom is from or intends to practice in a designated legal profession shortage area, a member of the Nebraska State Bar Association who practices in a designated legal profession shortage area selected by the president of the association, and the chief counsel of the Commission on Public Advocacy.

Source: Laws 2008, LB1014, § 22; Laws 2014, LB907, § 4.

7-206 Legal education for public legal service and rural practice loan repayment assistance program; rules and regulations; contents.

The board shall develop and recommend to the Commission on Public Advocacy rules and regulations that will govern the legal education for public legal service and rural practice loan repayment assistance program. The rules and regulations shall include:

(1) Recipients shall be either: (a) Full-time, salaried attorneys working for a tax-exempt charitable organization and whose primary duties are public legal service or (b) full-time attorneys primarily serving in a designated legal profession shortage area;

(2) Loan applicants shall pay an application fee established by the rules and regulations at a level anticipated to cover all or most of the administrative costs of the program. All application fees shall be remitted to the State Treasurer for credit to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund. Every effort shall be made to minimize administrative costs and the application fee;

(3) The maximum annual loan amount, which initially shall not exceed six thousand dollars per year per recipient, shall be an amount which is sufficient

to fulfill the purposes of recruiting and retaining public legal service attorneys in occupations and areas with unmet needs, including public legal service attorneys with skills in languages other than English and attorneys committed to working in designated legal profession shortage areas. The board may recommend adjustments of the loan amount annually to the commission to account for inflation and other relevant factors;

(4) Loans shall be made only to refinance existing educational loans;

(5) Information on the potential tax consequences of income from discharge of indebtedness;

(6) Recipients shall agree to practice the equivalent of at least three years of full-time practice in public legal service or a designated legal profession shortage area; and

(7) Other criteria for loan eligibility, application, payment, and repayment assistance necessary to carry out the purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act.

Source: Laws 2008, LB1014, § 24; Laws 2014, LB907, § 5.

7-207 Commission on Public Advocacy; applications; board; recommendations; certification of recipients.

The Commission on Public Advocacy shall accept applications for loan repayment assistance on an annual basis from qualified persons and shall present those applications to the board for its consideration. The board shall make recommendations for loans to the commission, and the commission shall certify the eligible recipients and the loan amount per recipient. The loans awarded to the recipients shall come from funds appropriated by the Legislature and any other funds that may be available from the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund.

Source: Laws 2008, LB1014, § 25; Laws 2014, LB907, § 7.

7-208 Commission on Public Advocacy; solicit and receive donations.

The Commission on Public Advocacy may solicit and receive donations from law schools, corporations, nonprofit organizations, bar associations, bar foundations, law firms, individuals, or other sources for purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. The donations shall be remitted to the State Treasurer for credit to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund.

Source: Laws 2008, LB1014, § 26; Laws 2014, LB907, § 8.

7-209 Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.

The Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund is created. The fund shall consist of funds appropriated or transferred by the Legislature, funds donated to the legal education for public legal service and rural practice loan repayment assistance program pursuant to section 7-208, and application fees collected under the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. Any money in the Legal Education for Public Service Loan Repayment Fund on July 18, 2014, shall be transferred to the Legal Education for Public Service and Rural

Practice Loan Repayment Assistance Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The unexpended, unobligated balance in the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund existing on June 30, 2017, shall be transferred to the General Fund on or before July 30, 2017, as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2008, LB1014, § 27; Laws 2014, LB907, § 9; Laws 2017, LB331, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

7-210 Commission on Public Advocacy; identify designated legal profession shortage areas; considerations.

The Commission on Public Advocacy shall periodically determine and identify designated legal profession shortage areas within Nebraska. The board shall develop and recommend to the commission legal profession shortage areas. In making such recommendations, the board shall consider, after consultation with other appropriate agencies concerned with legal and rural services and with appropriate professional organizations, factors including, but not limited to:

- (1) The latest reliable statistical data available regarding the number of attorneys practicing in an area and the population served by such attorneys;
- (2) Distances between client populations and attorney locations;
- (3) Particular local needs for legal services;
- (4) Capacity of local attorneys providing services and scope of practice being provided; and
- (5) Past and future demographic trends in an area.

Source: Laws 2014, LB907, § 6.

BANKS AND BANKING

CHAPTER 8 BANKS AND BANKING

Article.

1. General Provisions. 8-101 to 8-1,140.
2. Trust Companies. 8-204 to 8-234.
3. Building and Loan Associations. 8-318 to 8-374.
6. Assessments and Fees. 8-601 to 8-603.
7. State-Federal Cooperation Acts; Capital Notes.
 - (a) Federal Banking Act of 1933. 8-701 to 8-706.
 - (c) Federal Home Loan Bank Act. 8-716.
8. Personal Loans by Banks and Trust Companies. 8-815 to 8-828.
9. Bank Holding Companies. 8-915.
10. Nebraska Sale of Checks and Funds Transmission Act. Transferred or Repealed.
11. Securities Act of Nebraska. 8-1101 to 8-1123.
14. Disclosure of Confidential Information. 8-1401 to 8-1404.
15. Acquisition or Merger of Financial Institutions.
 - (c) Cross-Industry Acquisition or Merger of Financial Institution. 8-1510.
21. Interstate Branching and Merger Act. 8-2104.
23. Interstate Trust Company Office Act. 8-2306, 8-2311.
24. Credit Card Bank. 8-2401.
26. Credit Report Protection Act. 8-2601 to 8-2615.
27. Nebraska Money Transmitters Act. 8-2701 to 8-2748.
28. Real Estate Financing Enforcement and Servicing. 8-2801.

ARTICLE 1

GENERAL PROVISIONS

Section

- 8-101. Transferred to section 8-101.03.
- 8-101.01. Transferred to section 8-101.02.
- 8-101.02. Act, how cited.
- 8-101.03. Terms, defined.
- 8-102. Department of Banking and Finance; supervision and control of specified financial institutions; declaration of public purpose.
- 8-103. Director; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.
- 8-104. Director; oath; bond or insurance.
- 8-105. Deputies; counsels, examiners, and assistants; salaries; bond or insurance.
- 8-106. Director; rules and regulations; standards.
- 8-107. Banks; books and accounts; failure to keep; penalty.
- 8-108. Director; financial institution examination; powers; procedure; charge.
- 8-109. Financial institution examiner; failure to report unlawful conduct or unsafe condition; penalty.
- 8-110. Banks; bonds; filing; approval; requirements; open to inspection.
- 8-111. Director; real estate; power to convey; execution of conveyance.
- 8-112. Director; records required; disclosures prohibited; confidential records.
- 8-113. Unauthorized use of word bank or its derivatives; penalty.
- 8-114. Banks; corporate status required; unlawful banking; penalty.
- 8-115.01. Banks; new charter; transfer of charter; procedure.
- 8-116. Banks; capital stock; amount required.
- 8-116.01. Banks; capital notes and debentures; issuance; conditions.
- 8-117. Conditional bank charter; application; contents; hearing; notice; expenses; conversion to full bank charter; extension; written request; notice of expiration.

BANKS AND BANKING

- Section
- 8-118. Banks; unlawful promotion; sale of stock prior to issuance of charter; penalty.
- 8-119. Capital stock; sale; compensation prohibited; false statement; penalties.
- 8-120. Corporation; application to conduct, merge, or transfer bank; contents.
- 8-121. Repealed. Laws 2017, LB140, § 163.
- 8-122. Issuance of charter to transact business.
- 8-124. Banks; board of directors; president; meetings; examination; audit.
- 8-124.01. Banks; board of directors; vacancy; notice; filling; application for approval.
- 8-125. Banks; board of directors; meetings; record; contents; publication.
- 8-126. Bank directors; qualifications; approval by department; revocation of approval; procedure.
- 8-127. List of stockholders; open to inspection; violation; penalty.
- 8-128. Capital stock; increase; decrease; notice; publication; denial by director, when.
- 8-129. Stockholders' meeting; director may call; notice; expense.
- 8-130. Federal reserve system; membership by state banks and trust companies authorized; examinations.
- 8-132. Banks; available funds; deficient reserve; impairment of capital; duty of bank; powers and duties of department; notice to bank.
- 8-133. Rate of interest; prohibited acts; penalties; pledge of letters of credit authorized.
- 8-135. Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.
- 8-137. Checks; certification; requirements; effect.
- 8-138. Deposits; receiving when insolvent; prohibition; penalty.
- 8-139. Executive officers; approval of loans and investments; qualifications; license; revocation; violations; penalty; civil penalty; election to exempt active executive officers from license; procedure.
- 8-140. Mortgage loan originator; registration.
- 8-141. Loans; limits; exceptions.
- 8-143. Loans; excessive amount; violations; forfeiture of charter; directors' personal liability.
- 8-143.01. Extension of credit; limits; written report; credit report; violation; penalty; powers of director.
- 8-144. Loans or extension of credit; improper; willful and knowing violation; liability.
- 8-145. Loans; other improper solicitation or receipt of benefits; unlawful inducement; penalty.
- 8-147. Direct borrowing of bank; loans and investments; limitation on amounts; illegal transfer of assets; violation; penalty.
- 8-148. Banks; own capital stock; loans on, purchase, or use as collateral by bank prohibited; exceptions.
- 8-148.01. Corporation operating a computer center; investment of funds; limitation.
- 8-148.02. Banks; subscribe, invest, buy, and own stock; agricultural credit corporation; livestock loan company; limitation.
- 8-148.04. Community development investments; conditions.
- 8-148.05. Qualified Canadian Government obligations; investment.
- 8-148.07. Bank subsidiary corporation; authorized activities.
- 8-148.08. Bank subsidiary corporation; examination and regulation.
- 8-148.09. Bank; financial institution; merger, acquisition, or asset acquisition; transactions authorized.
- 8-150. Banks; real estate; power to acquire and convey; limitations and conditions.
- 8-151. Repealed. Laws 2017, LB140, § 163.
- 8-152. Banks; loans on real estate; authorized.
- 8-153. Checks; preprinted information; cleared at par; exception.
- 8-155. Repealed. Laws 2014, LB 714, § 1.
- 8-156. Repealed. Laws 2014, LB 714, § 1.
- 8-157. Branch banking; Director of Banking and Finance; powers.
- 8-157.01. Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties.

GENERAL PROVISIONS

- Section
- 8-158. Banks; appointment as personal representative or special administrator; authorized.
- 8-160. Banks; trust department; amendment of charter; supervision.
- 8-161. Banks; trust department; application; investigation; authorization.
- 8-162.02. Bank; fiduciary account controlled by trust department; collateral; public funds exempt.
- 8-163. Dividends; withdrawal of capital or surplus prohibited; not made; when.
- 8-164. Dividends declared; conditions.
- 8-166. Banks; reports to department; form; number required; verification; waiver.
- 8-167. Banks; reports to department; contents; publication.
- 8-167.01. Banks; publication requirements not applicable; when.
- 8-168. Banks; special reports to director.
- 8-169. Banks; reports; published statements; failure to make; penalty, recovery.
- 8-170. Records and files; time required to be kept; destroy, when.
- 8-171. Records; destruction; liability; excuse for failure to produce.
- 8-173. Actions against bank on claims inconsistent with records; accrual of cause of action; limitations.
- 8-174. Records and files; destruction; applicable to national banks.
- 8-175. Banks; false entry or statement; other offenses relating to books and records; penalty.
- 8-177. Banks; consolidation; approval required; creditors' claims.
- 8-178. National bank; reorganization as state bank; authorization; vote required; trust company business; conversion; public hearing; when.
- 8-179. National bank; reorganization as state bank; procedure; trust company business; charter.
- 8-180. State bank; reorganization as national bank; vote required.
- 8-182. State bank; conversion, merger, or consolidation with a national bank; objecting stockholders; stock; payment.
- 8-183. National or state bank; conversion, merger, or consolidation; resulting bank; assets; valuation.
- 8-183.04. State or federal savings association; mutual savings association; retention of mutual form authorized.
- 8-183.05. State or federal savings association; issuance of state bank charter; effect; section, how construed.
- 8-184. Voluntary liquidation; approval required; examination; fees.
- 8-185. Voluntary liquidation; procedure.
- 8-186. Bank; possession; voluntary surrender to department; notice; posting; liens dissolved.
- 8-187. Banks; department may take possession; when; examination of affairs; liens dissolved; retention of possession.
- 8-188. Banks; possession by department; effective upon notice.
- 8-189. Banks; attempted prevention of possession by department; penalty.
- 8-190. Banks; possession by department; refusal to deliver; possession by banks; application for court order.
- 8-191. Banks; possession by department; notice to banks and trust companies; notice or knowledge of possession forestalls liens.
- 8-192. Banks; possession by department; inventory of assets and liabilities; filing.
- 8-193. Banks; redelivery of possession; bond; departmental supervision; repossession by department.
- 8-194. Insolvent banks; determination; declaration by director; filing.
- 8-195. Insolvent banks; possession by department; petition to enjoin; show cause order; findings by district court; disposition of case.
- 8-196. Insolvent banks; liquidation; injunction; appeal; bond.
- 8-197. Insolvent banks; liquidation by Federal Deposit Insurance Corporation or by liquidating trustees.
- 8-198. Financial institutions; designation of receiver and liquidating agent; department; powers.
- 8-199. Financial institutions; department as receiver; powers; no compensation to director.
- 8-1,100. Insolvent banks; liquidation; special deputies, assistants, counsel; appointment; compensation; discharge.

- Section
8-1,101. Insolvent banks; liquidation; special deputies, assistants; bond or insurance; conditions.
8-1,102. Insolvent banks; department as receiver and liquidating agent; liens dissolved; assets; transfers to defraud creditors; preferences.
8-1,103. Insolvent banks; liquidation; Director of Banking and Finance; powers.
8-1,104. Insolvent banks; liquidation; director; collection of debts; sale or compromise of certain debts; procedure; deposit or investment of funds.
8-1,105. Insolvent banks; reorganization or liquidation proceedings; district judge; jurisdiction.
8-1,106. Insolvent banks; claims; filing; time limit.
8-1,107. Insolvent banks; claims; listing and classification; notice to claimant; filing of objection; powers and duties of director.
8-1,108. Insolvent banks; claims; objections to classification; hearing.
8-1,109. Insolvent banks; claims; certificate of indebtedness; assignment; payments endorsed on certificate.
8-1,110. Insolvent banks; claims; priority.
8-1,111. Insolvent banks; priority; not affected by federal deposit insurance.
8-1,112. Insolvent banks; director; payment of dividends.
8-1,113. Insolvent banks; liquidation expenses; allocation; certification.
8-1,115. Insolvent banks; liquidation; reports to district court; dissolution of bank; cancellation of charter.
8-1,116. Insolvent banks; stockholders; restoration of solvency; conditions.
8-1,117. Banks; impaired capital; assessments on stock to restore; preferred stock excepted.
8-1,118. Insolvent banks; restoration of solvency; reopening for limited business; conditions; costs; new deposits treated as a trust fund; expenses.
8-1,119. Violations; general penalty.
8-1,120. Repealed. Laws 2017, LB140, § 163.
8-1,121. Repealed. Laws 2017, LB140, § 163.
8-1,124. Emergencies; terms, defined.
8-1,125. Emergencies; proclamation; director; effect; temporary office.
8-1,126. Emergencies; officers; powers.
8-1,127. Emergency; proclamation; President of United States; Governor; effect.
8-1,128. Emergency; closing; notice; contents.
8-1,129. Emergencies; laws applicable.
8-1,131. Retirement plan, medical savings account, or health savings account, investments; bank as trustee or custodian; powers and duties; account, how treated.
8-1,133. Bank; business of leasing personal property; subject to rules and regulations.
8-1,134. Violations; director; powers; fines; notice; hearing; closure; emergency powers; service; procedures.
8-1,135. Appeal; procedure.
8-1,136. Action to enjoin and enforce compliance.
8-1,137. Evidence of violation; refer to prosecuting attorney.
8-1,138. Violation of final order; liability; penalty.
8-1,139. Misapplication of funds or assets; penalty.
8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-101 Transferred to section 8-101.03.

8-101.01 Transferred to section 8-101.02.

8-101.02 Act, how cited.

Sections 8-101.02 to 8-1,140 shall be known and may be cited as the Nebraska Banking Act.

Source: Laws 1998, LB 1321, § 32; Laws 1999, LB 396, § 4; Laws 2009, LB327, § 1; Laws 2010, LB891, § 1; R.S.1943, (2012), § 8-101.01; Laws 2017, LB140, § 1.

8-101.03 Terms, defined.

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

(1) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(2) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(3) Automatic teller machine means a machine established and located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated and at which banking transactions as defined in section 8-157.01 may be conducted. An unattended automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(4) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(6) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

(7) Capital or capital stock means capital stock;

(8) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine to perform any function for which it is designed;

(9) Department means the Department of Banking and Finance;

(10) Director means the Director of Banking and Finance;

(11) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

(12) Financial institution employees includes parent holding company and affiliate employees;

(13) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created

under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia;

(14) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(15) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus;

(16) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(17) Order includes orders transmitted by electronic transmission;

(18) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution; and

(19) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and are routed and transmitted to a financial institution or data processing center, wherever located. A switch may also be a data processing center.

Source: Laws 1963, c. 29, § 1, p. 134; Laws 1965, c. 27, § 1, p. 198; Laws 1967, c. 19, § 1, p. 117; Laws 1975, LB 269, § 1; Laws 1976, LB 561, § 1; Laws 1987, LB 615, § 1; Laws 1988, LB 375, § 1; Laws 1993, LB 81, § 1; Laws 1994, LB 611, § 1; Laws 1995, LB 384, § 1; Laws 1997, LB 137, § 1; Laws 1998, LB 1321, § 1; Laws 2000, LB 932, § 1; Laws 2002, LB 1089, § 1; Laws 2003, LB 131, § 1; Laws 2003, LB 217, § 1; Laws 2015, LB348, § 1; R.S. Supp., 2016, § 8-101; Laws 2017, LB140, § 2.

8-102 Department of Banking and Finance; supervision and control of specified financial institutions; declaration of public purpose.

The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust companies, credit unions, building and loan associations, and savings and loan associa-

tions, all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

Source: Laws 1963, c. 29, § 2, p. 134; Laws 2002, LB 1094, § 1; Laws 2003, LB 131, § 2; Laws 2017, LB140, § 3.

8-103 Director; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.

(1)(a) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency.

(b) The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, savings and loan associations, and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, savings and loan associations, and credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution chartered by the department, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the director by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, examiners of the Federal Deposit Insurance Corporation, and examiners of the Consumer Financial Protection Bureau shall be transmitted to the Governor.

(3)(a) No person employed by the department shall borrow money from any financial institution chartered by the department, except that any such person may borrow money in the normal course of business from the Nebraska State Employees Credit Union. If the credit union is acquired by, or merged into, a Nebraska state-chartered credit union, persons employed by the department may borrow money in the normal course of business from the successor credit union.

(b) In the event a loan to a person employed by the department is sold or otherwise transferred to a financial institution chartered by the department, no violation of this section occurs if (i) such person did not solicit the sale or transfer of the loan and (ii) such person gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section is guilty of a Class IV felony.

Source: Laws 1933, c. 18, § 2, p. 135; C.S.Supp.,1941, § 8-1,123; R.S. 1943, § 8-102; Laws 1963, c. 29, § 3, p. 135; Laws 1967, c. 20, § 1, p. 122; Laws 1985, LB 653, § 1; Laws 1988, LB 375, § 2; Laws 1996, LB 1053, § 1; Laws 2002, LB 1094, § 2; Laws 2003, LB 131, § 3; Laws 2013, LB213, § 1; Laws 2017, LB140, § 4.

8-104 Director; oath; bond or insurance.

The director shall, before assuming the duties of office, take and subscribe to the constitutional oath of office, file the oath in the office of the Secretary of State, and be bonded or insured as required by section 11-201.

Source: Laws 1933, c. 18, § 1, p. 134; Laws 1935, c. 12, § 1, p. 81; C.S.Supp.,1941, § 8-1,122; R.S.1943, § 8-101; Laws 1947, c. 16, § 2, p. 96; Laws 1947, c. 11, § 1, p. 75; Laws 1951, c. 303, § 1, p. 994; Laws 1957, c. 367, § 2, p. 1289; Laws 1959, c. 425, § 1, p. 1427; Laws 1961, c. 14, § 1, p. 106; R.R.S.1943, § 8-101; Laws 1963, c. 29, § 4, p. 135; Laws 1967, c. 20, § 2, p. 122; Laws 1978, LB 653, § 4; Laws 2004, LB 884, § 3; Laws 2017, LB140, § 5.

Cross References

For provisions of premium on bond of receiver, see section 25-21,218.

For provisions relating to appointment of Director of Banking and Finance, see section 81-102.

8-105 Deputies; counsels, examiners, and assistants; salaries; bond or insurance.

(1) The director may employ such deputies, counsels, examiners, and other assistants as he or she may need to discharge in a proper manner the duties imposed upon him or her by law. The deputies, counsels, examiners, and other assistants shall perform such duties as are assigned to them. The employment of any person in the work of the department is subject to section 49-1499.07.

(2) Deputies and financial institution examiners shall hold office at the will of the director and shall receive such salary as set by the director and approved by the Governor based upon the level of credentials for the positions.

(3) The deputies, counsels, examiners, and other assistants, before assuming the duties of office, shall be bonded or insured as required by section 11-201.

Source: Laws 1933, c. 18, § 3, p. 135; Laws 1933, c. 19, § 3, p. 186; C.S.Supp.,1941, § 8-1,124; Laws 1943, c. 13, § 1, p. 77; R.S. 1943, § 8-103; Laws 1945, c. 238, § 19, p. 712; Laws 1947, c. 16, § 3, p. 97; Laws 1951, c. 311, § 1, p. 1065; Laws 1955, c. 9, § 1, p. 74; R.R.S.1943, § 8-103; Laws 1963, c. 29, § 5, p. 135; Laws 1973, LB 164, § 1; Laws 1978, LB 653, § 5; Laws 1996, LB 1053, § 2; Laws 2003, LB 85, § 1; Laws 2004, LB 884, § 4; Laws 2017, LB140, § 6.

8-106 Director; rules and regulations; standards.

The director may adopt and promulgate rules and regulations for the governance of banks under his or her supervision as may in his or her judgment seem wise and expedient and which do not in any way conflict with any of the provisions of law. In adopting and promulgating such rules and regulations, the director shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

Source: Laws 1923, c. 191, § 34, p. 457; C.S.1929, § 8-104; Laws 1933, c. 18, § 7, p. 137; C.S.Supp.,1941, § 8-104; R.S.1943, § 8-107; Laws 1963, c. 29, § 6, p. 136; Laws 2017, LB140, § 7.

Cross References

For adoption and promulgation of administrative rules, Administrative Procedure Act, see section 84-920.

8-107 Banks; books and accounts; failure to keep; penalty.

The department has the authority to require the officers of any bank, or any of them, to open and keep such books or accounts as the department in its discretion may determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank. Any bank that refuses or neglects to open and keep such books or accounts as may be prescribed by the department shall be subject to a penalty of ten dollars for each day it neglects or fails to open and keep such books and accounts after receiving written notice from the department. Such penalty may be collected in the manner prescribed for the collection of fees for the examination of such bank.

Source: Laws 1923, c. 191, § 33, p. 456; C.S.1929, § 8-102; Laws 1933, c. 18, § 5, p. 136; C.S.Supp.,1941, § 8-102; R.S.1943, § 8-105; Laws 1963, c. 29, § 7, p. 136; Laws 2017, LB140, § 8.

8-108 Director; financial institution examination; powers; procedure; charge.

(1)(a) The director, his or her deputy, or any duly appointed examiner has the authority to make a thorough examination into all the books, papers, and affairs of any bank or other financial institution chartered by the department or its holding company, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such financial institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such financial institution or its holding company, if any. The director, deputy, or examiner has the authority to examine and monitor by electronic means the books, papers, and affairs of any financial institution or the holding company of a financial institution. The director may provide any examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency.

(b) The director may accept any examination or report from a foreign state agency and may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or the Consumer Financial Protection Bureau in lieu of an examination or report required under the Nebraska Banking Act. Any such examination or report accepted by the director remains the property and confidential record of the foreign state agency or federal agency which provided the examination or report to the director. A request or subpoena for any such examination or report shall be directed to the foreign state agency or federal agency which provided the examination or report to the director.

(2) The department has the authority to examine the books, papers, and affairs of any electronic data processing center which has contracted with a financial institution to conduct the financial institution's electronic data processing business. The department may charge the electronic data processing center for the time spent by examiners in such examination at the rate set forth in section 8-606 for examiners' time spent in examinations of financial institutions.

Source: Laws 1909, c. 10, § 8, p. 69; R.S.1913, § 287; Laws 1919, c. 190, tit. V, art. XVI, § 6, p. 687; C.S.1922, § 7987; Laws 1923, c. 191,

§ 8, p. 441; C.S.1929, § 8-118; Laws 1933, c. 18, § 13, p. 142; C.S.Supp.,1941, § 8-118; R.S.1943, § 8-115; Laws 1963, c. 29, § 8, p. 137; Laws 1985, LB 653, § 2; Laws 1988, LB 375, § 3; Laws 1992, LB 757, § 2; Laws 2007, LB124, § 1; Laws 2013, LB213, § 2; Laws 2017, LB140, § 9.

8-109 Financial institution examiner; failure to report unlawful conduct or unsafe condition; penalty.

If any financial institution examiner has knowledge of the insolvency or unsafe condition of any financial institution chartered by the department, that there are bad or doubtful assets in any such financial institution, that any such financial institution or any of its officers has violated any law governing the conduct of the financial institution, or that it is unsafe and inexpedient to permit any such financial institution to continue business, and the financial institution examiner fails to immediately report such fact in writing over his or her signature to the director, he or she is guilty of a Class II misdemeanor and shall forfeit his or her office.

Source: Laws 1923, c. 191, § 36, p. 457; Laws 1925, c. 30, § 8, p. 127; C.S.1929, § 8-110; Laws 1933, c. 18, § 9, p. 139; C.S.Supp.,1941, § 8-110; R.S.1943, § 8-108; Laws 1963, c. 29, § 9, p. 137; Laws 1977, LB 40, § 37; Laws 2017, LB140, § 10.

8-110 Banks; bonds; filing; approval; requirements; open to inspection.

The department shall require each bank to obtain a fidelity bond, naming the bank as obligee, in an amount to be fixed by the director. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the bank from loss which it may sustain, of money or other personal property, including that for which the bank is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. The director may provide for such copies to be filed electronically. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department. The bond shall be open to public inspection during the office hours of the department. In the event a bond is canceled, the director may take whatever action he or she deems appropriate in connection with the continued operation of the bank involved.

Source: C.S.1929, § 8-103; Laws 1930, Spec. Sess., c. 6, § 13, p. 32; Laws 1933, c. 18, § 6, p. 137; C.S.Supp.,1941, § 8-103; R.S.1943, § 8-106; Laws 1963, c. 29, § 10, p. 138; Laws 1973, LB 164, § 2; Laws 1979, LB 220, § 1; Laws 1985, LB 653, § 3; Laws 2017, LB140, § 11.

8-111 Director; real estate; power to convey; execution of conveyance.

The director may convey any real estate title which is vested in the department by operation of law or otherwise. Such conveyance shall be signed by the director, sealed with the seal of the department, and acknowledged by the director.

Source: Laws 1925, c. 30, § 7, p. 127; Laws 1929, c. 38, § 20, p. 167; C.S.1929, § 8-112; Laws 1933, c. 18, § 10, p. 140; C.S.Supp.,1941, § 8-112; R.S.1943, § 8-109; Laws 1963, c. 29, § 11, p. 138; Laws 2017, LB140, § 12.

8-112 Director; records required; disclosures prohibited; confidential records.

(1) The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under the jurisdiction of the department. Neither the director nor anyone connected with the department shall in any instance disclose the name of any customer, including a depositor, debtor, beneficiary, member, or account holder of any financial institution or other entity regulated by the department or the amount of any deposit, debt, or account holdings of any of them, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of debtors from the financial institutions and may give information concerning the total liabilities of any such debtor to any financial institution owning obligations of such debtor.

(2) Examination reports, investigation reports, and documents and information relating to such reports are confidential records of the department and may be released or disclosed only (a) insofar as is necessary in the performance of the official duty of the department or (b) pursuant to a properly issued subpoena to the department and upon entry of a protective order from a court of competent jurisdiction to protect and keep confidential the names of borrowers or depositors or to protect the public interest.

(3) Examination reports, investigation reports, and documents and information relating to such reports remain confidential records of the department, even if such examination reports, investigation reports, and documents and information relating to such reports are transmitted to a financial institution or other entity regulated by the department which is the subject of such reports or documents and information, and may not be otherwise released or disclosed by any such financial institution or other entity regulated by the department.

(4) The restrictions listed in subsections (2) and (3) of this section shall also apply to any representative or agent of the financial institution or other entity regulated by the department.

(5) If examination reports, investigation reports, or documents and information relating to such reports are subpoenaed from the department, the party issuing the subpoena shall give notice of the issuance of such subpoena at least three business days in advance of the entry of a protective order to the financial institution or other entity regulated by the department which is the subject of such reports or documents and information, unless the financial institution or other entity regulated by the department is already a party to the underlying proceeding or unless such notice is otherwise prohibited by law or by court order.

Source: Laws 1923, c. 191, § 35, p. 457; Laws 1929, c. 38, § 18, p. 166; C.S.1929, § 8-119; Laws 1933, c. 18, § 14, p. 142;

C.S.Supp.,1941, § 8-119; R.S.1943, § 8-116; Laws 1963, c. 29, § 12, p. 138; Laws 1987, LB 2, § 1; Laws 1996, LB 1053, § 3; Laws 1997, LB 137, § 2; Laws 1999, LB 396, § 6; Laws 2009, LB327, § 3; Laws 2017, LB140, § 13.

8-113 Unauthorized use of word bank or its derivatives; penalty.

(1) No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity.

(2) This section does not apply to:

(a) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency;

(b) Bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used;

(c) Affiliates or subsidiaries of (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used;

(d) Organizations substantially owned by (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used, or (iv) any combination of entities listed in subdivisions (i) through (iii) of this subdivision;

(e) Mortgage bankers licensed or registered under the Residential Mortgage Licensing Act, if the word mortgage immediately precedes the word bank or its derivative;

(f) Organizations which are described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, which are exempt from taxation under section 501(a) of the code, and which are not providing or arranging for financial services subject to the authority of the department, a foreign state agency, or the federal government;

(g) Trade associations which are exempt from taxation under section 501(c)(6) of the code and which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof;

(h) Firms, companies, corporations, or associations which sponsor incentive-based solid waste recycling programs that issue reward points or credits to persons for their participation therein; and

(i) Such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof.

(3) This section does not apply to an individual, firm, company, corporation, or association doing business in Nebraska which uses the word bank or any derivative thereof as any part of a title or description of any business activity if such use is unlikely to mislead or confuse the public or give the impression that such individual, firm, company, corporation, or association is lawfully organized and operating as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government.

(4) Any violation of this section is a Class V misdemeanor.

Source: Laws 1921, c. 297, § 1, p. 949; Laws 1921, c. 313, § 1, p. 1000; C.S.1922, § 7985; Laws 1929, c. 37, § 1, p. 155; C.S.1929, § 8-116; Laws 1933, c. 18, § 12, p. 141; C.S.Supp.,1941, § 8-116; R.S.1943, § 8-113; Laws 1963, c. 29, § 13, p. 139; Laws 1977, LB 40, § 38; Laws 1987, LB 2, § 2; Laws 1998, LB 1321, § 2; Laws 2004, LB 999, § 1; Laws 2005, LB 533, § 1; Laws 2007, LB124, § 2; Laws 2009, LB32, § 1; Laws 2009, LB328, § 1; Laws 2010, LB762, § 1; Laws 2017, LB140, § 14.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

8-114 Banks; corporate status required; unlawful banking; penalty.

(1) It is unlawful for any person to conduct a bank within this state except by means of a corporation duly organized for such purpose under the laws of this state. It is unlawful for any corporation to receive money upon deposit or conduct a bank under the laws of this state until such corporation has complied with all the provisions and requirements of the Nebraska Banking Act.

(2) Any violation of this section is a Class V misdemeanor for each day of the continuation of such offense and is cause for the appointment of a receiver as provided in the act to wind up such banking business.

Source: Laws 1909, c. 10, § 2, p. 66; R.S.1913, § 281; Laws 1919, c. 190, tit. V, art. XVI, § 3, p. 686; C.S.1922, § 7984; C.S.1929, § 8-115; R.S.1943, § 8-111; Laws 1963, c. 29, § 14, p. 139; Laws 1977, LB 40, § 39; Laws 1987, LB 2, § 3; Laws 1998, LB 1321, § 3; Laws 2017, LB140, § 15.

8-115.01 Banks; new charter; transfer of charter; procedure.

When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general

circulation in the county where the applicant proposes to operate the bank. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate;

(2) When application is made for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) 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 where the main office of the applicant is to be located and (b) after giving notice to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) Except as provided in subdivision (6) of this section, when application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant warrants a hearing. If the director determines that the condition of the applicant does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed main office and charter of the applicant would be located and (b) give notice of such application to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. When the persons making

application for transfer of a main office and charter are officers or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) Except as provided in subdivision (6) of this section, when application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) With the approval of the director, a bank may move its main office and charter to the location of a branch of the bank without public notice or hearing as long as (a) the condition of the bank, in the discretion of the director, does not warrant a hearing and (b) the branch (i) is located in Nebraska, (ii) has been in operation for at least one year as a branch of the bank or was acquired by the bank pursuant to section 8-1506 or 8-1516, and (iii) is simultaneously relocated to the original main office location;

(7) The director shall send any notice to financial institutions required by this section 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;

(8) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director; and

(9) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Source: Laws 1965, c. 25, § 1, p. 191; Laws 1967, c. 19, § 2, p. 117; Laws 1973, LB 164, § 3; Laws 1974, LB 721, § 1; Laws 1979, LB 220, § 2; Laws 2002, LB 957, § 1; Laws 2003, LB 217, § 2; Laws 2005, LB 533, § 2; Laws 2008, LB851, § 1; Laws 2010, LB890, § 1; Laws 2016, LB751, § 1.

8-116 Banks; capital stock; amount required.

(1) Except as provided in subsection (2) of this section, a charter for a bank shall not be issued unless the corporation applying therefor has surplus and paid-up capital stock in an amount not less than the amount necessary for compliance with subsection (1) of section 8-702 for the insurance of deposits.

(2) The director has the authority to determine the minimum amount of paid-up capital stock and surplus required for any corporation applying for a bank

charter, which amount shall not be less than the amount provided in subsection (1) of this section.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 95; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(1), p. 102; R.S.1943, § 8-119; Laws 1959, c. 15, § 3, p. 132; Laws 1961, c. 15, § 1, p. 111; R.R.S.1943, § 8-119; Laws 1963, c. 29, § 16, p. 140; Laws 1967, c. 19, § 3, p. 118; Laws 1973, LB 164, § 4; Laws 1979, LB 220, § 3; Laws 1983, LB 252, § 2; Laws 2002, LB 1094, § 3; Laws 2008, LB851, § 2; Laws 2015, LB155, § 1; Laws 2017, LB140, § 16.

8-116.01 Banks; capital notes and debentures; issuance; conditions.

With the approval of the director, any bank may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in, in cash, to the end that the sound capital assets shall at least equal the capital or capital stock of the bank. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank and shall not be held liable for assessments to restore impairments in the capital of such bank.

Source: Laws 1935, c. 8, § 11, p. 76; C.S.Supp.,1941, § 8-411; R.S.1943, § 8-710; Laws 1961, c. 14, § 9, p. 109; R.R.S.1943, § 8-710; Laws 1973, LB 164, § 5; Laws 2003, LB 217, § 3; Laws 2005, LB 533, § 3; Laws 2017, LB140, § 17.

8-117 Conditional bank charter; application; contents; hearing; notice; expenses; conversion to full bank charter; extension; written request; notice of expiration.

(1)(a) The director may grant approval for a conditional bank charter which may remain inactive for an initial period of up to eighteen months.

(b) The purpose for which a conditional bank charter may be granted is limited to the acquisition or potential acquisition of a financial institution which (i) is located in this state or which has a branch in this state and (ii) has been determined to be troubled or failing by its primary state or federal regulator.

(2) A person or persons organizing for and desiring to obtain a conditional bank charter shall make, under oath, and transmit to the department an application prescribed by the department, to include, but not be limited to:

(a) The name of the proposed bank;

(b) A draft copy of the articles of incorporation of the proposed bank;

(c) The names, addresses, financial condition, and business history of the proposed stockholders, officers, and directors of the proposed bank;

(d) The sources and amounts of capital that would be available to the proposed bank; and

(e) A preliminary business plan describing the operations of the proposed bank.

(3) Upon receipt of a substantially completed application for a conditional bank charter and payment of the fee required by section 8-602, the director may, in his or her discretion, hold a public hearing on the application. If a hearing is to be held, notice of the filing of the application and the date of hearing thereon shall be published by the department for three weeks in a minimum of two newspapers with general circulation in Nebraska. The newspapers shall be selected at the director's discretion, except that the director shall consider the county or counties of residence of the proposed members of the board of directors of the proposed conditional bank charter in making such selection. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing. Notice shall also be sent by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail.

(4) If the director determines that a hearing on the application for a conditional bank charter is not necessary, then the department shall publish a notice of the proposed application in a minimum of two newspapers of general circulation in Nebraska. The newspapers shall be selected in accordance with subsection (3) of this section. The department shall send notice of the application by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail. If the director receives a substantive objection to the application within fifteen days after the publication or notice, whichever occurs last, a hearing shall be scheduled on the application.

(5) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

(6) If the director upon investigation and after any public hearing on the application is satisfied that (a) the stockholders, officers, and directors of the proposed corporation applying for such conditional bank charter are parties of integrity and responsibility, (b) the applicant has sufficient sources and amounts of capital available to the proposed bank, and (c) the applicant has a business plan describing the operations of the proposed bank that indicates the proposed bank has a reasonable probability of usefulness and success, the department shall, upon the payment of any required fees and costs, grant a conditional bank charter effective for a period not to exceed eighteen months from the date of issuance.

(7) A conditional bank charter may be converted to a full bank charter upon proof satisfactory to the director that:

(a) The financial institution to be acquired is in a troubled or failing status as required by subsection (1) of this section;

(b) The requirements of section 8-110 have been met;

(c) The requirements of section 8-702 have been met;

(d) Capital stock and surplus in amounts determined pursuant to section 8-116 have been paid in;

(e) The fees required by section 8-602 have been paid to the department; and

(f) Any other conditions imposed by the director have been complied with.

(8) A conditional bank charter may be extended for successive periods of one year if the holder of the charter files a written request for an extension of such charter at least ninety days prior to the expiration date of such charter. Such request shall be accompanied by (a) any information deemed necessary by the director to assure the department that the requirements of subsection (6) of this section continue to be met and (b) the fee required by section 8-602.

(9) The department shall issue a notice of expiration of a conditional bank charter if eighteen months have passed since the issuance of such charter and the holder of such charter (a) has not converted to a full bank charter pursuant to subsection (7) of this section, (b) has not made a request for an extension pursuant to subsection (8) of this section, or (c) has made a request for an extension pursuant to subsection (8) of this section which was not approved by the director.

Source: Laws 2010, LB891, § 2; Laws 2016, LB751, § 2; Laws 2017, LB140, § 18.

8-118 Banks; unlawful promotion; sale of stock prior to issuance of charter; penalty.

(1) It shall be unlawful for any person for hire (a) to promote or attempt to promote the organization of a corporation to conduct the business of a bank in this state or (b) to sell the capital stock of such a corporation prior to the issuance of a charter to such corporation authorizing its operation as a bank.

(2) Any person violating the provisions of this section is guilty of a Class II misdemeanor.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 96; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(4), p. 103; R.S.1943, § 8-122; Laws 1959, c. 15, § 6, p. 134; R.R.S.1943, § 8-122; Laws 1963, c. 29, § 18, p. 141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 6; Laws 1977, LB 40, § 40; Laws 2017, LB140, § 19.

8-119 Capital stock; sale; compensation prohibited; false statement; penalties.

No corporation organized for the purpose of conducting a bank under the laws of this state shall be granted the charter provided in section 8-122 until the corporation has filed with the department a statement, under oath, of the president or cashier of such corporation that no premium, bonus, commission, compensation, reward, salary, or other form of remuneration has been paid, or promised to be paid, to any person for selling the stock of such corporation. The president or cashier of any such corporation who shall be found guilty of filing a false statement under the provisions of this section is guilty of a Class I misdemeanor. If, after such charter has been delivered, the director determines, after a public hearing, that such statement is false, the department shall cancel

such charter, and a receiver shall be appointed for such corporation in the manner provided for in case of a corporation which is conducting a bank in an unsafe or unauthorized manner.

Source: Laws 1919, c. 190, tit. V, art. XVI, § 54, p. 708; C.S.1922, § 8034; C.S.1929, § 8-128; R.S.1943, § 8-130; Laws 1963, c. 29, § 19, p. 141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 7; Laws 1977, LB 40, § 41; Laws 2017, LB140, § 20.

8-120 Corporation; application to conduct, merge, or transfer bank; contents.

(1) Every corporation organized for and desiring to conduct a bank or to conduct a bank for purposes of a merger with an existing bank shall make under oath and transmit to the department a complete detailed application giving (a) the name of the proposed bank; (b) a copy of the proposed articles of incorporation; (c) the names of the stockholders; (d) the county, city, or village and the exact location therein in which such bank is proposed to be located; (e) the nature of the proposed banking business; (f) the proposed amounts of paid-up capital stock and surplus, and the items of actual cash and property, as reported and approved at a meeting of the stockholders, to be included in such amounts; and (g) a statement that at least twenty percent of the amounts stated in subdivision (f) of this subsection have in fact been paid in to the corporation by its stockholders.

(2) In the case of a merger, the existing bank which is to be merged into shall complete an application and meet the requirements of this section.

(3) This section also applies when application is made for transfer of a bank charter and move of a bank's main office to any location other than (a) within the corporate limits of the city or village of its original charter, (b) within the county in which it is located if such bank charter is not located in a city or village, or (c) as provided in subdivision (6) of section 8-115.01.

Source: Laws 1909, c. 10, § 15, p. 74; R.S.1913, § 294; Laws 1919, c. 190, tit. V, art. XVI, § 15, p. 691; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7996; C.S.1929, § 8-126; Laws 1933, c. 18, § 17, p. 143; C.S.Supp.,1941, § 8-126; R.S.1943, § 8-128; Laws 1959, c. 15, § 9, p. 135; R.R.S.1943, § 8-128; Laws 1963, c. 29, § 20, p. 142; Laws 1967, c. 19, § 7, p. 120; Laws 1980, LB 916, § 1; Laws 2002, LB 957, § 2; Laws 2005, LB 533, § 4; Laws 2008, LB851, § 3; Laws 2017, LB140, § 21.

8-121 Repealed. Laws 2017, LB140, § 163.

8-122 Issuance of charter to transact business.

(1) After the examination and approval by the Director of Banking and Finance of the application required by section 8-120, if the director upon investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders, directors, and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the

paid-up capital stock and surplus have been paid in, as determined by the Director of Banking and Finance in accordance with section 8-116, issue to such corporation a charter to transact the business of a bank in this state provided for in its articles of incorporation. In the case of a bank organized to merge with an existing bank, there shall be a rebuttable presumption that the public necessity, convenience, and advantage will be met by the merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subsection shall be subject to section 8-1516.

(2) On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Source: Laws 1909, c. 10, § 16, p. 74; Laws 1911, c. 8, § 1, p. 79; R.S.1913, § 295; Laws 1919, c. 190, tit. V, art. XVI, § 16, p. 692; Laws 1921, c. 302, § 2, p. 958; C.S.1922, § 7997; C.S.1929, § 8-127; R.S.1943, § 8-129; Laws 1947, c. 12, § 1, p. 77; Laws 1957, c. 10, § 1, p. 128; R.R.S.1943, § 8-129; Laws 1963, c. 29, § 22, p. 142; Laws 1967, c. 19, § 9, p. 120; Laws 1980, LB 916, § 2; Laws 1983, LB 252, § 3; Laws 1996, LB 1275, § 2; Laws 2002, LB 957, § 3; Laws 2002, LB 1094, § 4; Laws 2008, LB851, § 4; Laws 2017, LB140, § 22.

8-124 Banks; board of directors; president; meetings; examination; audit.

(1) The affairs and business of any bank shall be managed or controlled by a board of directors of not less than five and not more than twenty-five members, who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the corporation and in conformity with the Nebraska Banking Act. The board of directors shall select a president. No person shall act as president if he or she is not a member of the board of directors.

(2) The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Source: Laws 1909, c. 10, § 26, p. 78; Laws 1911, c. 8, § 26, p. 81; R.S.1913, § 305; Laws 1919, c. 190, tit. V, art. XVI, § 26, p. 696; C.S.1922, § 8007; C.S.1929, § 8-138; R.S.1943, § 8-140; Laws 1961, c. 15, § 4, p. 112; R.R.S.1943, § 8-140; Laws 1963, c. 29, § 24, p. 143; Laws 1967, c. 21, § 1, p. 123; Laws 1973, LB 164, § 9; Laws 1974, LB 721, § 2; Laws 1987, LB 2, § 6; Laws 1998, LB 1321, § 6; Laws 2005, LB 533, § 5; Laws 2007, LB124, § 3; Laws 2017, LB140, § 23.

8-124.01 Banks; board of directors; vacancy; notice; filling; application for approval.

At any time that a vacancy on the board of directors of a bank occurs, the bank shall, within thirty days, notify the department of the vacancy. Vacancies

shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. When the vacancy has been filled, the bank shall make application to the department for approval of the director appointed in accordance with section 8-126.

Source: Laws 1973, LB 164, § 10; Laws 1995, LB 599, § 1; Laws 2017, LB140, § 24.

8-125 Banks; board of directors; meetings; record; contents; publication.

A full and complete record of the proceedings and business of all meetings of the board of directors shall be recorded in the bank's minutes. Such record of the meetings shall show the gross earnings and disposition thereof by indicating expenses and taxes paid, worthless items charged off, depreciation in assets, amount carried to surplus fund, and amount of dividend, and shall also indicate the amount of undivided profits remaining. Published statements of assets and liabilities shall show for undivided profits only the net amount after deducting all expenses.

Source: Laws 1923, c. 191, § 37, p. 458; C.S.1929, § 8-139; R.S.1943, § 8-141; Laws 1963, c. 29, § 25, p. 144; Laws 2017, LB140, § 25.

8-126 Bank directors; qualifications; approval by department; revocation of approval; procedure.

(1) A majority of the members of the board of directors of any bank shall have their residences in this state or within twenty-five miles of the main office of the bank. Reasonable efforts shall be made to acquire members of such board of directors from the county in which the main office of such bank is located and from counties in which branches of such bank are located.

(2) Directors of banks shall be persons of good moral character, known integrity, business experience, and responsibility. No person shall act as a member of the board of directors of any bank until such bank applies for and obtains approval from the department.

(3) If the department, upon investigation, determines that any director of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors, the Director of Banking and Finance has the authority, following notice and opportunity for hearing, to revoke such approval to act as a member of the board of directors.

(4) The Director of Banking and Finance may adopt and promulgate rules and regulations and prescribe forms to carry out this section.

Source: Laws 1909, c. 10, § 12, p. 71; R.S.1913, § 291; Laws 1919, c. 190, tit. V, art. XVI, § 10, p. 689; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7991; C.S.1929, § 8-121; Laws 1935, c. 7, § 1, p. 70; C.S.Supp.,1941, § 8-121; R.S.1943, § 8-118; Laws 1959, c. 15, § 2, p. 132; R.R.S.1943, § 8-118; Laws 1963, c. 29, § 26, p. 144; Laws 1973, LB 164, § 11; Laws 1986, LB 1035, § 1; Laws 1987, LB 2, § 7; Laws 1988, LB 996, § 1; Laws 1989, LB 322, § 1; Laws 1993, LB 81, § 2; Laws 1997, LB 137, § 3; Laws 1998, LB 1321, § 7; Laws 2017, LB140, § 26.

8-127 List of stockholders; open to inspection; violation; penalty.

(1) Every bank shall cause to be kept at all times a full and correct list of the names and residences of all its stockholders, the number of shares held by each, and the amount of paid-up capital represented thereby. Such list shall be subject to the inspection of all stockholders of the bank during all business hours, and shall be kept in the business office where all stockholders may have ready access to it.

(2) Any person violating this section is guilty of a Class III misdemeanor.

Source: Laws 1909, c. 10, § 38, p. 85; R.S.1913, § 317; Laws 1919, c. 190, tit. V, art. XVI, § 38, p. 701; C.S.1922, § 8018; C.S.1929, § 8-157; R.S.1943, § 8-162; Laws 1963, c. 29, § 27, p. 145; Laws 1977, LB 40, § 42; Laws 2017, LB140, § 27.

8-128 Capital stock; increase; decrease; notice; publication; denial by director, when.

The paid-in capital stock of any bank may be increased or decreased in the following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock authorize an officer of the bank to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for two weeks in some newspaper published and of general circulation in the county where the main office of such bank is located. Reduction of paid-in capital stock shall be discretionary with the director, but shall be denied if granting the same would reduce the paid-in capital stock below the requirements of the Nebraska Banking Act or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-157; Laws 1961, c. 15, § 7, p. 113; R.R.S.1943, § 8-157; Laws 1963, c. 29, § 28, p. 145; Laws 1987, LB 2, § 8; Laws 1998, LB 1321, § 8; Laws 2015, LB155, § 2; Laws 2017, LB140, § 28.

8-129 Stockholders' meeting; director may call; notice; expense.

Whenever the director deems it expedient, he or she may call a meeting of the stockholders of any bank by sending notice of such meeting to each stockholder five days previous thereto. All necessary expenses incurred in the giving of such notice shall be borne by the bank whose stockholders are required to convene.

Source: Laws 1933, c. 18, § 41, p. 157; C.S.Supp.,1941, § 8-1,126; R.S. 1943, § 8-1,106; Laws 1963, c. 29, § 29, p. 146; Laws 2017, LB140, § 29.

8-130 Federal reserve system; membership by state banks and trust companies authorized; examinations.

Any bank or trust company, organized under the laws of this state, may subscribe to the capital stock of the Federal Reserve Bank of Kansas City, Missouri, and become a member of the federal reserve system created and organized under an act of Congress of the United States, approved December 23, 1913, and known as the Federal Reserve Act, and may assume such liabilities and exercise such powers as a member of such system as are prescribed by the provisions of such act, or amendments thereto. So long as such bank or trust company shall remain a member of such system, it shall be subject to examination by the legally constituted authorities, and to all provisions of such Federal Reserve Act and regulations made pursuant thereto by the Federal Reserve Board which are applicable to such bank or trust company as a member of the federal reserve system. The director may, in his or her discretion, accept examinations and audits made under the provisions of the Federal Reserve Act in lieu of examinations required of banks or trust companies organized under the laws of this state.

Source: Laws 1915, c. 175, § 1, p. 359; Laws 1919, c. 190, tit. V, art. XVI, § 65, p. 711; C.S.1922, § 8045; C.S.1929, § 8-163; R.S.1943, § 8-166; Laws 1963, c. 29, § 30, p. 146; Laws 2017, LB140, § 30.

8-132 Banks; available funds; deficient reserve; impairment of capital; duty of bank; powers and duties of department; notice to bank.

(1) The available funds of a bank shall consist of cash on hand and balances due from other solvent banks. Cash shall include lawful money of the United States and exchange for any clearinghouse association. Whenever the available funds or any reserve of any bank are deemed deficient by the director, such bank shall not make any new loans or discount otherwise than by discounting or purchasing bills of exchange payable at sight or make any dividends of its profits until it has on hand available funds and reserve deemed sufficient for operation by the director. The department shall notify any bank, in case its available funds or reserves are deemed deficient or its capital is impaired, to make good such available funds, reserves, or capital within such time as the director may direct, and any failure of such bank to make good any deficiency in the amount of its available funds, reserve, or capital within the time directed shall be cause for the department to take possession of such bank, declare it insolvent, and liquidate it as provided in the Nebraska Banking Act.

(2) The capital of any bank shall be deemed to be unimpaired when the amount of capital notes and debentures as represented by cash or sound assets exceeds an impairment as found by the department.

Source: Laws 1909, c. 10, § 23, p. 77; R.S.1913, § 302; Laws 1919, c. 190, tit. V, art. XVI, § 23, p. 695; C.S.1922, § 8004; C.S.1929, § 8-135; Laws 1933, c. 18, § 24, p. 147; C.S.Supp.,1941, § 8-135; R.S. 1943, § 8-137; R.R.S.1943, § 8-137; Laws 1963, c. 29, § 32, p. 147; Laws 1965, c. 28, § 1, p. 200; Laws 1987, LB 2, § 9; Laws 1998, LB 1321, § 9; Laws 2003, LB 217, § 4; Laws 2017, LB140, § 31.

8-133 Rate of interest; prohibited acts; penalties; pledge of letters of credit authorized.

(1)(a) Except as provided in this section, a bank may pay interest at any rate on any deposits made or retained in the bank.

(b) A bank shall not pay to any officer, director, principal stockholder, or employee a greater rate of interest on the deposits of such officer, director, principal stockholder, or employee than that paid to other depositors on similar deposits with such bank. Any person who causes the payment of a greater rate of interest on such deposits is guilty of a Class IV felony. Any officer, director, principal stockholder, or employee who requests or receives a greater rate of interest on his or her deposits than that paid to other depositors on similar deposits with such bank is guilty of a Class IV felony.

(2) Any officer, director, principal stockholder, or employee of a bank or any other person who, directly or indirectly, and either personally or for the bank, pledges any assets of the bank, except as provided in this section or otherwise by law, for making or retaining a deposit in the bank is guilty of a Class IV felony. Any depositor who accepts any such pledge of assets is guilty of a Class IV felony. Deposits made in violation of this section are not entitled to priority of payment from the assets of the bank.

(3) A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345.

(4) A bank may secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C. 162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

(5) A bank may secure deposits by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in the Public Funds Deposit Security Act.

(6) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

(7) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor an irrevocable, nontransferable, unconditional standby letter of credit issued by the Federal Home Loan Bank of Topeka which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

(8) For purposes of this section, principal stockholder means a person owning ten percent or more of the voting shares of the bank.

Source: Laws 1909, c. 10, § 27, p. 79; Laws 1911, c. 8, § 27, p. 81; R.S.1913, § 306; Laws 1919, c. 190, tit. V, art. XVI, § 27, p. 696; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 8008; Laws 1925, c. 28, § 1, p. 119; C.S.1929, § 8-140; Laws 1930, Spec. Sess., c. 6, § 8, p. 30; Laws 1933, c. 18, § 26, p. 148; C.S.Supp.,1941, § 8-140; R.S.1943, § 8-142; Laws 1959, c. 15, § 12, p. 136; R.R.S.1943, § 8-142; Laws 1963, c. 29, § 33, p. 147; Laws 1977, LB 40, § 43; Laws 1978, LB 966, § 1; Laws 1980, LB 966, § 1; Laws 1990, LB 956, § 1; Laws 1994, LB 979, § 1; Laws 1996, LB 1053, § 4; Laws 2003, LB 217, § 5; Laws 2009, LB74, § 1; Laws 2017, LB140, § 32.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

8-135 Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) All persons, individually or with others and regardless of age, may enter into an agreement with a bank for the lease of a safe deposit box and shall be bound by the terms of the agreement.

(3) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as the act existed on January 1, 2018, and shall not affect the legal relationships between a minor and any person other than the bank.

Source: Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6; Laws 2013, LB213, § 3; Laws 2016, LB760, § 1; Laws 2017, LB140, § 33; Laws 2018, LB812, § 1. Effective date April 12, 2018.

8-137 Checks; certification; requirements; effect.

No officer or employee of any bank shall certify any check drawn upon such bank unless the person, firm, or corporation drawing the check has on deposit with the bank at the time such check is certified an amount of credit, on the depositors' ledger of such bank, subject to the payment of such check, equal to the amount specified in such check. The amount of such check shall not be recoverable from the payee or holder except in case of fraud. Whenever a check drawn upon any bank is certified by any officer or employee of such bank, the amount of the check shall be immediately charged against the account of the person, firm, or corporation drawing the check.

Source: Laws 1909, c. 10, § 39, p. 85; R.S.1913, § 318; Laws 1919, c. 190, tit. V, art. XVI, § 39, p. 701; C.S.1922, § 8019; C.S.1929, § 8-158; R.S.1943, § 8-163; Laws 1963, c. 29, § 37, p. 149; Laws 2017, LB140, § 34.

8-138 Deposits; receiving when insolvent; prohibition; penalty.

No bank shall accept or receive on deposit for any purpose any money, bank bills, United States treasury notes or currency, or other notes, bills, checks, drafts, credits, or currency, when such bank is insolvent. If any bank receives or accepts on deposit any such deposits when such bank is insolvent, the officer, agent, or employee knowingly receiving or accepting or being accessory to, permitting, or conniving at the receiving or accepting on deposit of such bank any such deposit, is guilty of a Class III felony.

Source: Laws 1909, c. 10, § 30, p. 80; R.S.1913, § 309; Laws 1919, c. 190, tit. V, art. XVI, § 30, p. 697; C.S.1922, § 8010; C.S.1929, § 8-147; R.S.1943, § 8-147; Laws 1963, c. 29, § 38, p. 149; Laws 1977, LB 40, § 44; Laws 2017, LB140, § 35.

8-139 Executive officers; approval of loans and investments; qualifications; license; revocation; violations; penalty; civil penalty; election to exempt active executive officers from license; procedure.

(1) No loan or investment shall be made by a bank, directly or indirectly, without the approval of an active executive officer.

(2) Executive officers of banks shall be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank on sound banking principles.

(3) Except as provided in subsection (6) of this section, no person shall act as an active executive officer of any bank until such bank has applied for and obtained from the department a license for such person to act as an active executive officer. If the director, upon investigation, is satisfied that any active executive officer of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors of the bank, the department may revoke the license of such active executive officer or suspend the ability of such active executive officer to continue to act as an active executive officer.

(4) Any person (a) whose license has been revoked or whose authority has been suspended by the department under subsection (3) of this section or who lacks a license and on whose behalf no election was made under subsection (6) of this section and (b) who acts or attempts to act as an active executive officer of a bank is guilty of a Class III felony.

(5) As part of any order of revocation or suspension under subsection (3) of this section, the director may levy a civil penalty against the active executive officer personally in an amount not to exceed ten thousand dollars. The civil penalty shall not be paid out of the assets of the bank in which the active executive officer is employed or otherwise performing services pursuant to contract. The department shall remit the civil penalty collected to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Any person whose authority has been revoked or suspended with prejudice under this section shall not be eligible to act as an executive officer at any other bank without authorization to do so from the department.

(6) A bank has the right, on or after August 24, 2017, to elect for its active executive officers to be exempt from the requirement to apply for and obtain a license from the department. An election, once made, shall remain in effect

with respect to all active executive officers of the bank until and unless the election is revoked by the bank. An election or revocation shall be made in a form and manner established by the department. Within thirty days after revoking such election, such bank shall apply for and obtain from the department a license for any person acting or desiring to act as an active executive officer of the bank.

(7) For purposes of this section, active executive officer means any employee of a bank or any person under contract to perform services for a bank who is determined by the department to be a policy-dominant individual in the bank or who exercises (a) management functions, (b) major policymaking functions, or (c) substantial employee supervision, including the power to terminate employment. An active executive officer includes, but is not limited to, a president, a vice-president, a cashier, an assistant cashier, a chief executive officer, a loan officer, or an investment officer.

(8) The director may adopt and promulgate rules and regulations and prescribe forms to be used to carry out the intent of this section.

Source: Laws 1921, c. 297, § 7, p. 952; C.S.1922, § 8048; C.S.1929, § 8-166; Laws 1933, c. 18, § 38, p. 154; C.S.Supp.,1941, § 8-166; R.S.1943, § 8-169; Laws 1963, c. 29, § 39, p. 150; Laws 1977, LB 40, § 45; Laws 2017, LB140, § 36.

8-140 Mortgage loan originator; registration.

Any financial institution chartered by the department that employs a mortgage loan originator, as defined in section 45-702, shall register such employee with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employee's identity to the Nationwide Mortgage Licensing System and Registry:

(1) 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

(2) 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.

Source: Laws 2017, LB140, § 37.

8-141 Loans; limits; exceptions.

(1) No bank shall directly or indirectly loan to any single corporation, limited liability company, firm, or individual, including in such loans all loans made to the several members or shareholders of such corporation, limited liability company, or firm, for the use and benefit of such corporation, limited liability company, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. Such limitations shall be subject to the following exceptions:

(a) Obligations of any person, partnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face

amount of the notes covered by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(b) Obligations of any person, partnership, limited liability company, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(c) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus; or

(d) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, in an amount at least equal to the face amount of the note or notes secured by such collateral, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus.

(2)(a) For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the bills of exchange or commercial paper shall not be considered as the lending of money.

(b) Loans or obligations shall not be subject to any limitation under this section, based upon such capital and surplus or such unimpaired capital and unimpaired surplus, to the extent that such capital and surplus or such unimpaired capital and unimpaired surplus are secured or covered by guaranties, or by commitments or agreements to take over or to purchase such capital and surplus or such unimpaired capital and unimpaired surplus, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision of the state. The phrase general obligation of any state or any political subdivision of the state means an obligation supported by the full faith and credit of an obligor possessing general powers of taxation,

including property taxation, but does not include municipal revenue bonds and sanitary and improvement district warrants which are subject to the limitations set forth in this section.

(c) Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(d) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the director by rule and regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(e) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus or such unimpaired capital and unimpaired surplus. The director may adopt and promulgate rules and regulations governing the terms and conditions of such security interest and segregated deposit account.

(f) For the purpose of determining lending limits, partnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every partnership in which he or she is a partner, except that for purposes of this section (a) an individual shall only be charged with the debt of any limited partnership in which he or she is a partner to the extent that the terms of the limited partnership agreement provide that such individual is to be held liable for the debts or actions of such limited partnership and (b) no individual shall be charged with the debt of any general partnership in which he or she is a partner beyond the extent to which (i) his or her liability for such partnership debt is limited by the terms of a contract or other written agreement between the bank and such individual and (ii) any personal debt of such individual is incurred for the use and benefit of such general partnership.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

(4) Any bank may purchase or take an interest in life insurance contracts for any purpose incidental to the business of banking. A bank's purchase of any life insurance contract, as measured by its cash surrender value, from any one life insurance company shall not at any time exceed twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. A bank's purchase of life insurance contracts, as measured by their cash surrender values, in the aggregate from all life insurance

companies shall not at any time exceed thirty-five percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank. The limitations under this subsection on a bank's purchase of life insurance contracts, in the aggregate from all life insurance companies, shall not apply to any contract purchased prior to April 5, 1994.

(5) On and after January 21, 2013, the director has the authority to determine the manner and extent to which credit exposure resulting from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions shall be taken into account for purposes of determining compliance with this section. In making such determinations, the director may, but is not required to, act by rule and regulation or order.

(6) For purposes of this section:

(a) Derivative transaction means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets;

(b) Loan includes:

(i) All direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of that person;

(ii) To the extent specified by rule and regulation or order of the director, any liability of a state bank to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(iii) Any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the bank and the person; and

(c) Unimpaired capital and unimpaired surplus means (i) the bank's tier 1 and tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), and (ii) the balance of the bank's allowance for loan and lease losses not included in the bank's tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3). Notwithstanding the provisions of section 8-1,140, the director may, by order, deny or limit the inclusion of goodwill in the calculation of a bank's unimpaired capital and unimpaired surplus or in the calculation of a bank's paid-up capital and surplus.

Source: Laws 1909, c. 10, § 33, p. 81; R.S.1913, § 312; Laws 1919, c. 190, tit. V, art. XVI, § 33, p. 698; Laws 1921, c. 313, § 1, p. 1002; C.S.1922, § 8013; Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 151; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(1), p. 67; R.S.1943, § 8-150; Laws 1959, c. 15, § 14, p. 137; R.R.S.1943, § 8-150; Laws 1963, c. 29, § 41, p. 151; Laws 1965, c. 28, § 3, p. 201; Laws 1969, c. 35, § 1, p. 241; Laws 1972, LB 1151, § 1; Laws 1973, LB 164, § 13; Laws 1986,

LB 983, § 2; Laws 1987, LB 753, § 1; Laws 1988, LB 788, § 1; Laws 1990, LB 956, § 2; Laws 1993, LB 81, § 3; Laws 1993, LB 121, § 87; Laws 1994, LB 979, § 2; Laws 1999, LB 396, § 7; Laws 2006, LB 876, § 8; Laws 2012, LB963, § 1; Laws 2017, LB140, § 38.

8-143 Loans; excessive amount; violations; forfeiture of charter; directors' personal liability.

If the directors of any bank knowingly violate or knowingly permit any of the officers, employees, or agents of the bank to violate section 8-141, all rights, privileges, and franchises of the bank shall be forfeited. Before the charter of the bank is declared forfeited, the violation shall be determined and adjudged by a court of competent jurisdiction in an action brought for that purpose by the Director of Banking and Finance in his or her own name. In case of such violation, every director of the bank who participated in or knowingly assented to the violation or permission to violate section 8-141 shall be liable in his or her personal and individual capacity for all damages which the bank, its shareholders, or any other person has sustained in consequence of such violation.

Source: Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 152; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(3), p. 68; R.S.1943, § 8-152; Laws 1959, c. 15, § 15, p. 138; R.R.S. 1943, § 8-152; Laws 1963, c. 29, § 43, p. 152; Laws 2010, LB890, § 3; Laws 2017, LB140, § 39.

8-143.01 Extension of credit; limits; written report; credit report; violation; penalty; powers of director.

(1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers:

(a) In any amount to finance the education of such executive officer's children;

(b)(i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5)(a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used.

(b) Except as provided in subdivision (c) of this subsection, in lieu of the reports required by subdivision (a) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers.

(c) Subdivisions (a) and (b) of this subsection do not apply to any executive officer if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7)(a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with

other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2).

(8) For purposes of this section:

(a) Executive officer means a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer includes the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus means the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section is guilty of a Class IV felony.

(10) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out this section, including rules and regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O as such section and regulation existed on January 1, 2018.

Source: Laws 1994, LB 611, § 2; Laws 1997, LB 137, § 4; Laws 1999, LB 396, § 8; Laws 2001, LB 53, § 1; Laws 2005, LB 533, § 7; Laws 2008, LB851, § 5; Laws 2017, LB140, § 40; Laws 2018, LB812, § 2.

Effective date April 12, 2018.

8-144 Loans or extension of credit; improper; willful and knowing violation; liability.

Any officer or employee of any bank who willfully and knowingly violates any provision of sections 8-141 to 8-143.01 shall be liable under his or her bond for any loss to the bank resulting therefrom.

Source: Laws 1909, c. 10, § 40, p. 86; R.S.1913, § 319; Laws 1919, c. 190, tit. V, art. XVI, § 40, p. 701; C.S.1922, § 8020; C.S.1929, § 8-159; R.S.1943, § 8-153; Laws 1963, c. 29, § 44, p. 152; Laws 1994, LB 611, § 3; Laws 2017, LB140, § 41.

8-145 Loans; other improper solicitation or receipt of benefits; unlawful inducement; penalty.

Any stockholder or director, officer, agent, or employee of any bank who, for the use or benefit of himself or herself or any person other than the bank, solicits, asks for, or receives or agrees to receive from any person any gift or compensation or reward or inducement of any kind for (1) procuring or endeavoring to procure any loan from such bank to any person, (2) procuring or endeavoring to procure the purchase by such bank from any person of any negotiable or nonnegotiable instrument of any kind by discount or otherwise, (3) procuring or endeavoring to procure the purchase by such bank from any person of any real or personal property of any kind, or (4) procuring or endeavoring to procure such bank to permit any person to overdraw his or her account with such bank, is guilty of a Class I misdemeanor.

Source: Laws 1923, c. 191, § 40, p. 458; C.S.1929, § 8-151; R.S.1943, § 8-154; Laws 1963, c. 29, § 45, p. 152; Laws 1977, LB 40, § 48; Laws 2017, LB140, § 42.

8-147 Direct borrowing of bank; loans and investments; limitation on amounts; illegal transfer of assets; violation; penalty.

(1) The aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, except with the prior written permission of the director. Direct borrowing does not include:

(a) Money borrowed on the bank's bills payable secured by (i) direct or indirect obligations of the United States Government or (ii) obligations guaranteed by agencies of the United States Government;

(b) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal reserve system or the federal reserve banks, if the bank is a member of the federal reserve system;

(c) Rediscounts, bills payable, borrowings, or other liabilities with or to the Federal Home Loan Bank System or the Federal Home Loan Banks, if the bank is a member of the Federal Home Loan Bank System; or

(d) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal intermediate credit banks.

(2) The aggregate amount of the loans and investments of any bank shall at no time exceed fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures. For purposes of this section, loans and investments shall not include a bank's (a) cash reserves, (b) real estate and buildings at which the bank is authorized to conduct its business, (c) furniture and fixtures, and (d) obligations set forth in subdivisions (1)(a), (b), and (c) of this section.

(3) Any bank becoming a member of the federal reserve system or the Federal Home Loan Bank System shall have the same privileges to the same extent as national banks.

(4) With the prior written permission of the director, a bank may rediscount paper in an amount in excess of its paid-up capital stock.

(5) Any transfer of assets of a bank in violation of this section is void as against the creditors of the bank.

(6) Any officer, director, or employee of a bank who does, or permits to be done, any act in violation of this section and any other person who knowingly assists in the violation of this section is guilty of a Class IV felony.

Source: Laws 1909, c. 10, § 24, p. 78; R.S.1913, § 303; Laws 1919, c. 190, tit. V, art. XVI, § 24, p. 695; Laws 1922, Spec. Sess., c. 6, § 1, p. 66; C.S.1922, § 8005; Laws 1923, c. 190, § 1, p. 435; C.S.1929, § 8-136; Laws 1933, c. 18, § 25, p. 147; C.S.Supp.,1941, § 8-136; R.S.1943, § 8-138; Laws 1945, c. 8, § 1, p. 105; Laws 1959, c. 15, § 11, p. 136; R.R.S.1943, § 8-138; Laws 1963, c. 29, § 47, p. 153; Laws 1969, c. 36, § 1, p. 243; Laws 1973, LB 143, § 1; Laws 1977, LB 40, § 49; Laws 1982, LB 779, § 1; Laws 1983, LB 177, § 1; Laws 1994, LB 979, § 3; Laws 1996, LB 1053, § 5; Laws 1997, LB 2, § 1; Laws 2017, LB140, § 43.

8-148 Banks; own capital stock; loans on, purchase, or use as collateral by bank prohibited; exceptions.

(1) Except as provided in subsection (2) or (3) of this section, a bank shall not make any loan or discount on the security of the shares of its own capital stock or the capital stock of its holding company, if any, be the purchaser or holder of any such shares, or purchase any securities convertible into stock or, except as provided in this section and sections 8-148.01, 8-148.02, 8-148.04, 8-148.06, 8-149, and 21-2109, the shares of any corporation, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Such stock so purchased or acquired shall, within six months after the time of its purchase unless written approval of a longer holding period is obtained from the director, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the bank, except that such stock, if shares of another bank or a bank holding company, shall be sold or disposed of as required by the director. In no case shall the amount of stock so held at any one time exceed ten percent of the paid-up capital of such bank.

(2) Any bank may subscribe to, invest, purchase, and own shares of investment companies registered under the Investment Company Act of 1940 when the investment companies' assets consist of and are limited to obligations that are eligible for investment by the bank. The director may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownership.

(3) Any bank may subscribe to, invest, purchase, and own Student Loan Marketing Association stock, Government National Mortgage Association stock, Federal National Mortgage Association stock, Federal Agricultural Mortgage Corporation stock, Federal Home Loan Mortgage Corporation stock, or stock issued by any authorized agency of the United States Government, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, which the director has approved by rule and regulation or order. The director may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownerships, except that a bank shall not obligate more than five percent of its capital, surplus, undivided profits, and unencumbered reserves for such stock.

Source: Laws 1909, c. 10, § 25, p. 78; R.S.1913, § 304; Laws 1919, c. 190, tit. V, art. XVI, § 25, p. 695; C.S.1922, § 8006; C.S.1929, § 8-137;

R.S.1943, § 8-139; Laws 1963, c. 29, § 48, p. 154; Laws 1973, LB 164, § 14; Laws 1985, LB 165, § 1; Laws 1987, LB 532, § 1; Laws 1987, LB 453, § 2; Laws 1987, LB 237, § 1; Laws 1988, LB 996, § 2; Laws 1993, LB 81, § 4; Laws 2003, LB 217, § 6; Laws 2005, LB 533, § 8; Laws 2017, LB140, § 44.

8-148.01 Corporation operating a computer center; investment of funds; limitation.

Any bank may invest not more than ten percent of its capital and surplus either in stock of a corporation operating a computer center or directly, alone or with others, in a computer center. With written approval of the director, such additional percentage of its capital and surplus may be so invested as the director shall approve. Such investment is not subject to the provisions of sections 8-148, 8-149, and 8-150.

Source: Laws 1967, c. 18, § 1, p. 116; Laws 1993, LB 81, § 5; Laws 2017, LB140, § 45.

8-148.02 Banks; subscribe, invest, buy, and own stock; agricultural credit corporation; livestock loan company; limitation.

Any bank may subscribe to, invest, buy, and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, the principal business of which corporation must be the extension of short and intermediate term credit to farmers and ranchers, including partnerships, limited liability companies, and corporations engaged in farming and ranching, for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. The bank shall not obligate more than thirty-five percent of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures for such purposes, except that if the bank owns at least eighty percent of the voting stock of such agricultural credit corporation or livestock loan company, the limitation on the amount of obligation for such purposes shall not apply. Such subscription, investment, possession, or ownership is not subject to the provisions of sections 8-148, 8-149, and 8-150.

Source: Laws 1969, c. 30, § 1, p. 235; Laws 1971, LB 720, § 1; Laws 1974, LB 845, § 1; Laws 1982, LB 779, § 2; Laws 1993, LB 121, § 88; Laws 2017, LB140, § 46.

8-148.04 Community development investments; conditions.

(1) Any bank may make a community development investment or investments either directly or through purchasing an equity interest in or an evidence of indebtedness of an entity primarily engaged in making community development investments, if the following conditions are satisfied:

(a) An investment under this subsection does not expose the bank to unlimited liability; and

(b) The bank's aggregate investment under this subsection does not exceed fifteen percent of its capital and surplus. If the bank's investment in any one entity will exceed five percent of its capital and surplus, the prior written approval of the director must be obtained.

(2) Nothing in this section prevents a bank from charging off as a contribution an investment made pursuant to subsection (1) of this section.

(3) The subscription, investment, possession, or ownership is not subject to sections 8-148, 8-149, and 8-150.

(4) For purposes of this section, community development investments means investments of a predominantly civic, community, or public nature and not merely private and entrepreneurial.

Source: Laws 1993, LB 81, § 6; Laws 1994, LB 979, § 4; Laws 1996, LB 1184, § 1; Laws 2006, LB 876, § 9; Laws 2007, LB124, § 4; Laws 2017, LB140, § 47.

8-148.05 Qualified Canadian Government obligations; investment.

(1) Any bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations to the same extent that such bank may deal in, underwrite, and purchase for its own account obligations of the United States Government or general obligations of any state thereof.

(2) For purposes of this section:

(a) Qualified Canadian Government obligation means any debt obligation which is backed by Canada or any Canadian province to a degree which is comparable to the liability of the United States Government or any state thereof for any obligation which is backed by the full faith and credit of the United States Government or any state thereof. Qualified Canadian Government obligations also includes any debt obligation of any agent of Canada or any Canadian province if:

(i) The obligation of the agent is assumed in such agent's capacity as agent for Canada or any Canadian province; and

(ii) Canada or any Canadian province, on whose behalf such agent is acting with respect to such obligation, is ultimately and unconditionally liable for such obligation; and

(b) The term Canadian province means a province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

Source: Laws 1993, LB 423, § 1; Laws 2017, LB140, § 48.

8-148.07 Bank subsidiary corporation; authorized activities.

A bank subsidiary corporation shall engage in only those activities prescribed under subdivision (6) of section 8-101.03 or that its bank shareholder or shareholders are authorized to perform under the laws of this state and shall engage in those activities only at locations in this state where the bank shareholder or shareholders could be authorized to perform activities.

Source: Laws 1995, LB 384, § 3; Laws 2000, LB 932, § 2; Laws 2017, LB140, § 49.

8-148.08 Bank subsidiary corporation; examination and regulation.

A bank subsidiary corporation is subject to examination and regulation by the department to the same extent as its bank shareholder or shareholders.

Source: Laws 1995, LB 384, § 4; Laws 2017, LB140, § 50.

8-148.09 Bank; financial institution; merger, acquisition, or asset acquisition; transactions authorized.

(1) Any bank may subscribe to, invest, buy, and own stock of another financial institution if the transaction is part of the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of substantially all of the assets of the other financial institution by the acquiring bank, and if:

(a) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the other financial institution and the other financial institution will not be operated by the acquiring bank as a separate entity; and

(b) The transaction receives the prior approval of the director.

(2) Any bank may subscribe to, invest, buy, and own stock of a company controlling another financial institution if the transaction is part of (a) the merger or consolidation of the company controlling the other financial institution with the company controlling the acquiring bank, or the acquisition of substantially all of the assets of the company controlling the other financial institution by the company controlling the acquiring bank, and (b) the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of substantially all of the assets of the other financial institution by the acquiring bank, and if:

(i) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the company controlling the other financial institution, and neither the company controlling the other financial institution nor the other financial institution will be operated by the acquiring bank as a separate entity; and

(ii) The transaction receives the prior approval of the director.

(3) Any bank that acquires stock of another financial institution or company controlling another financial institution pursuant to this section shall not be deemed to be a bank holding company for purposes of the Nebraska Bank Holding Company Act of 1995, so long as the conditions of subdivision (1)(a) or (2)(b)(i) of this section, as applicable, are satisfied.

(4) For purposes of this section, financial institution means a bank, savings bank, credit card bank, savings and loan association, building and loan association, trust company, or credit union organized under the laws of any state or organized under the laws of the United States.

Source: Laws 2017, LB140, § 51.

8-150 Banks; real estate; power to acquire and convey; limitations and conditions.

(1) Any bank may purchase, hold, and convey real estate that is (a) acquired pursuant to section 8-149, (b) conveyed to it for debts due the bank, or (c) purchased at sale under judgments, decrees, deeds of trust, or mortgages held by the bank or purchased to secure debts due to it upon its securities, but the bank at such sale shall not bid a larger amount than required to satisfy such judgments or decrees with costs. Real estate acquired in satisfaction of debts or at a sale upon judgments, decrees, deeds of trust, or mortgages shall be sold at private or public sale within five years unless authority shall be given in writing by the director to hold it for a longer period.

(2) The total amount of real estate held by any bank for purposes of subdivisions (1)(b) and (c) of this section shall not be entered on the records of

the bank as an asset at a value greater than (a) the unpaid balance of the debts due the bank plus its out-of-pocket expenses incurred in acquiring clear title, (b) its judgments or decrees with costs, or (c) the appraised value of such real estate, whichever is less, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property.

(3) A bank may utilize property acquired by it under subdivisions (1)(b) and (c) of this section in any manner authorized by the director.

Source: Laws 1909, c. 10, § 29, p. 80; R.S.1913, § 308; Laws 1919, c. 190, tit. V, art. XVI, § 29, p. 697; C.S.1922, § 8009-a; Laws 1925, c. 30, § 10, p. 128; C.S.1929, § 8-145; Laws 1933, c. 18, § 29, p. 149; C.S.Supp.,1941, § 8-145; R.S.1943, § 8-145; Laws 1959, c. 15, § 13, p. 137; R.R.S.1943, § 8-145; Laws 1963, c. 29, § 50, p. 155; Laws 1985, LB 653, § 5; Laws 2017, LB140, § 52.

8-151 Repealed. Laws 2017, LB140, § 163.

8-152 Banks; loans on real estate; authorized.

A bank may make loans secured by real estate or may participate with other financial institutions in such loans whether such participation occurs at the inception of the loan or at any time after the loan was made.

Source: Laws 1963, c. 29, § 52, p. 156; Laws 1965, c. 28, § 4, p. 202; Laws 1972, LB 1226, § 1; Laws 1973, LB 164, § 16; Laws 1974, LB 845, § 2; Laws 1979, LB 220, § 6; Laws 1982, LB 779, § 3; Laws 1994, LB 979, § 5; Laws 2017, LB140, § 53.

8-153 Checks; preprinted information; cleared at par; exception.

All checks, unless sent to banks as special collection items, shall have preprinted the magnetically encoded routing and transit symbol of the bank and either the name of the maker or the magnetically encoded account number of the maker. Except for checks sent to banks as special collection items or checks presented for payment by the payee in person, all checks drawn on any bank shall be cleared at par by the bank on which they are drawn. The term at par applies only to the settlement of checks between collecting and paying or remitting banks and does not apply to or prohibit a bank from deducting a fee from the face amount of the check for paying the check if the check is presented to the bank by the payee in person.

Source: Laws 1945, c. 11, § 1, p. 110; R.R.S.1943, § 8-163.01; Laws 1963, c. 29, § 53, p. 157; Laws 1979, LB 269, § 1; Laws 2015, LB155, § 3; Laws 2017, LB140, § 54.

8-155 Repealed. Laws 2014, LB 714, § 1.

8-156 Repealed. Laws 2014, LB 714, § 1.

8-157 Branch banking; Director of Banking and Finance; powers.

(1) Except as otherwise provided in this section and section 8-2103, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and

maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which the main office of such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if the main office of such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

(i) Class I county means a county in this state with a population of four hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county means a county in this state with a population of at least two hundred thousand and less than four hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county means a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county means a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking

transactions allowed by law may be made at a branch acquired pursuant to this subsection.

(5) With the approval of the director, a bank may establish a branch pursuant to subdivision (6) of section 8-115.01. All banking transactions allowed by law may be made at such branch.

(6) The name given to any branch established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch which is unaffiliated with the newly created branch and is located in the same city, village, or county. The name of such newly created branch shall be approved by the director.

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

(8) A bank which has a main chartered office or approved branch located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

(9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, to establish or acquire a branch pursuant to subsection (1) of section 8-2103, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1927, c. 33, § 1, p. 153; C.S.1929, § 8-1,118; R.S.1943, § 8-1,105; Laws 1959, c. 17, § 1, p. 141; R.R.S.1943, § 8-1,105; Laws 1963, c. 29, § 57, p. 158; Laws 1973, LB 312, § 1; Laws

1975, LB 269, § 2; Laws 1977, LB 77, § 1; Laws 1983, LB 58, § 1; Laws 1983, LB 252, § 4; Laws 1984, LB 1026, § 1; Laws 1985, LB 295, § 1; Laws 1985, LB 625, § 1; Laws 1986, LB 983, § 3; Laws 1987, LB 615, § 2; Laws 1988, LB 703, § 1; Laws 1989, LB 272, § 1; Laws 1990, LB 956, § 4; Laws 1991, LB 190, § 1; Laws 1991, LB 782, § 1; Laws 1992, LB 470, § 1; Laws 1992, LB 757, § 3; Laws 1993, LB 81, § 7; Laws 1995, LB 456, § 1; Laws 1995, LB 599, § 2; Laws 1996, LB 1275, § 3; Laws 1997, LB 56, § 1; Laws 1997, LB 136, § 1; Laws 1997, LB 137, § 6; Laws 1997, LB 351, § 9; Laws 2002, LB 957, § 4; Laws 2002, LB 1089, § 2; Laws 2002, LB 1094, § 5; Laws 2003, LB 217, § 7; Laws 2005, LB 533, § 9; Laws 2008, LB851, § 6; Laws 2010, LB890, § 4; Laws 2012, LB963, § 2; Laws 2016, LB742, § 2; Laws 2016, LB751, § 3; Laws 2017, LB140, § 55.

8-157.01 Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties.

(1) Any establishing financial institution may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transferring funds from checking accounts to savings accounts, transferring funds from savings accounts to checking accounts, transferring funds from either checking accounts and savings accounts to accounts of other customers, transferring payments from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, account balance inquiry, and any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public, may be conducted. Any automatic teller machine owned by a nonfinancial institution third party shall be sponsored by an establishing financial institution. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution the automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines.

(3)(a)(i) All automatic teller machines shall be made available on a nondiscriminating basis for use by Nebraska customers of a user financial institution and (ii) all Nebraska automatic teller machine transactions initiated by Nebraska customers of a user financial institution shall be made on a nondiscriminating basis.

(b) It shall not be deemed discrimination if (i) an automatic teller machine does not offer the same transaction services as other automatic teller machines, (ii) there are no automatic teller machine usage fees charged between affiliate financial institutions for the use of automatic teller machines, (iii) the automatic teller machine usage fees of an establishing financial institution that authorizes and directly or indirectly routes Nebraska automatic teller machine transac-

tions to multiple switches, all of which comply with the requirements of subdivision (3)(d) of this section, differ solely upon the fact that the automatic teller machine usage fee schedules of such switches differ from one another, (iv) automatic teller machine usage fees differ based upon whether the transaction initiated at an automatic teller machine is subject to a surcharge or provided on a surcharge-free basis, (v) the manner in which an establishing financial institution authorizes and directly or indirectly routes Nebraska automatic teller machine transactions results in the same automatic teller machine usage fees for all user financial institutions for essentially the same service routed over the same switch, or (vi) the automatic teller machines established or sponsored by an establishing financial institution are made available for use by Nebraska customers of any user financial institution which agrees to pay the automatic teller machine usage fee and which conforms to the operating rules and technical standards established by the switch to which a Nebraska automatic teller machine transaction is directly or indirectly routed.

(c) The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that the automatic teller machine is not made available on a nondiscriminating basis or that Nebraska automatic teller machine transactions initiated at such automatic teller machine are not made on a nondiscriminating basis.

(d) A switch (i) shall provide to all financial institutions that have a main office or approved branch located in the State of Nebraska and that conform to the operating rules and technical standards established by the switch an equal opportunity to participate in the switch for the use of and access thereto; (ii) shall implement the same automatic teller machine usage fee for all user financial institutions for essentially the same service; (iii) shall be capable of operating to accept and route Nebraska automatic teller machine transactions, whether receiving data from an automatic teller machine, an establishing financial institution, or a data processing center; and (iv) shall be capable of being directly or indirectly connected to every data processing center for any automatic teller machine.

(e) The director, upon notice and after a hearing, may terminate or suspend the operation of any switch with respect to all Nebraska automatic teller machine transactions if he or she determines that the switch is not being operated in the manner required under subdivision (3)(d) of this section.

(f) Subject to the requirement for a financial institution to comply with this subsection, no user financial institution or establishing financial institution shall be required to become a member of any particular switch.

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2018. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state by a financial institution, a group of two or more financial institutions, or a combination of a financial institution or financial institutions and a third party or parties. Such parties may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises.

(7) Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at automatic teller machines or point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8)(a) Annually by September 1, any entity operating as a switch in Nebraska shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska.

(b) Any entity intending to operate in Nebraska as a switch shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska. Such notice shall be filed at least thirty days prior to the date on which the switch commences operations, and thereafter annually by September 1.

(9) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(10) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining (a) if an automatic teller machine has been made available or Nebraska automatic teller machine transactions have been made on a nondiscriminating basis for use by Nebraska customers of a user financial institution or (b) if a switch complies with subdivision (3)(d) of this section.

(11) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

(12) Switch fees shall not be subject to this section or be regulated by the department.

(13) Nothing in this section shall prevent a group of two or more credit unions, each of which has a main chartered office or an approved branch located in the State of Nebraska, from participating in a credit union service organization organized on or before January 1, 2015, for the purpose of owning automatic teller machines, provided that all participating credit unions have an ownership interest in the credit union service organization and that the credit

union service organization has an ownership interest in each of the participating credit unions' automatic teller machines. Such participation and any automatic teller machine usage fees associated with Nebraska automatic teller machine transactions initiated by customers of participating credit unions at such automatic teller machines shall not be considered for purposes of determining if such automatic teller machines have been made available on a nondiscriminating basis or if Nebraska automatic teller machine transactions initiated at such automatic teller machines have been made on a nondiscriminating basis, provided that all Nebraska automatic teller machine transactions initiated by customers of participating credit unions result in the same automatic teller machine usage fees for essentially the same service routed over the same switch.

(14) Nebraska automatic teller machine usage fees and any agreements relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(c) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(d) Automatic teller machine usage fee means any per transaction fee established by a switch or otherwise established on behalf of an establishing financial institution and collected from the user financial institution and paid to the establishing financial institution for the use of the automatic teller machine. An automatic teller machine usage fee shall not include switch fees;

(e) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(f) Essentially the same service means the same Nebraska automatic teller machine transaction offered by an establishing financial institution irrespective of the user financial institution, the Nebraska customer of which initiates the Nebraska automatic teller machine transaction. A Nebraska automatic teller machine transaction that is subject to a surcharge is not essentially the same service as the same banking transaction for which a surcharge is not imposed;

(g) Establishing financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska that establishes or sponsors an automatic teller machine or any out-of-state financial institution that establishes or sponsors an automatic teller machine;

(h) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the department, the United States, or a foreign state agency; any other similar

organization which is covered by federal deposit insurance; or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Nebraska automatic teller machine transaction means a banking transaction as defined in subsection (1) of this section which is (i) initiated at an automatic teller machine established in whole or in part or sponsored by an establishing financial institution, (ii) for an account of a Nebraska customer of a user financial institution, and (iii) processed through a switch regardless of whether it is routed directly or indirectly from an automatic teller machine;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer;

(l) Sponsoring an automatic teller machine means the acceptance of responsibility by an establishing financial institution for compliance with all provisions of law governing automatic teller machines and Nebraska automatic teller machine transactions in connection with an automatic teller machine owned by a nonfinancial institution third party;

(m) Switch fee means a fee established by a switch and assessed to a user financial institution or to an establishing financial institution other than an automatic teller machine usage fee; and

(n) User financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska which avails itself of and provides its customers with automatic teller machine services.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1; Laws 2015, LB348, § 2; Laws 2016, LB760, § 2; Laws 2017, LB140, § 56; Laws 2018, LB812, § 3.

Effective date April 12, 2018.

8-158 Banks; appointment as personal representative or special administrator; authorized.

Any bank may be appointed and shall have power to act, either by itself or jointly with any natural person or persons, as personal representative of the estate of any deceased person or as special administrator of the estate of any deceased person under the appointment of a court of record having jurisdiction of the estate of such deceased person. When a bank is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose, the president, vice president, or secretary of the bank may, on behalf of the bank, make and subscribe to the required oath.

Source: Laws 1959, c. 18, § 1, p. 142; Laws 1961, c. 14, § 3, p. 107; Laws 1961, c. 16, § 1, p. 116; R.R.S.1943, § 8-1,117; Laws 1963, c. 29, § 58, p. 158; Laws 1973, LB 164, § 17; Laws 1986, LB 909, § 1; Laws 2017, LB140, § 57.

8-160 Banks; trust department; amendment of charter; supervision.

The director has the authority to issue to banks amendments to their charters of authority to transact trust business as defined in the Nebraska Trust Company Act and has general supervision and control over such trust department of banks.

Source: Laws 1959, c. 19, § 2, p. 143; Laws 1961, c. 14, § 5, p. 108; R.R.S.1943, § 8-1,119; Laws 1963, c. 29, § 60, p. 159; Laws 1993, LB 81, § 10; Laws 1998, LB 1321, § 11; Laws 2017, LB140, § 58.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-161 Banks; trust department; application; investigation; authorization.

The director, before granting to any bank the right to operate a trust department, shall require such bank to make an application for amendment of its charter, setting forth such information as the director may require. If, upon investigation, the director is satisfied that the trust department of the bank requesting such amendment will be operated by officers of integrity and responsibility, the department shall, with such additional capital as the director shall require, issue to such bank an amendment to its charter, entitling it to operate a trust department and entitling it to transact the business provided for in the Nebraska Trust Company Act.

Source: Laws 1959, c. 19, § 3, p. 144; Laws 1961, c. 14, § 6, p. 108; R.R.S.1943, § 8-1,120; Laws 1963, c. 29, § 61, p. 159; Laws 1993, LB 81, § 11; Laws 1998, LB 1321, § 12; Laws 2017, LB140, § 59.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-162.02 Bank; fiduciary account controlled by trust department; collateral; public funds exempt.

(1) A bank may deposit or have on deposit funds of a fiduciary account controlled by the bank's trust department unless prohibited by applicable law.

(2) To the extent that the funds are awaiting investment or distribution and are not insured or guaranteed by the Federal Deposit Insurance Corporation, a bank shall set aside collateral as security under the control of appropriate fiduciary officers and bank employees. The bank shall place pledged assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees of the bank designated for that purpose by the board of directors. The bank may maintain the investments of a fiduciary account off-premises if consistent with applicable law and if the bank maintains adequate safeguards and controls. The market value of the collateral shall at all times equal or exceed the amount of the uninsured or unguaranteed fiduciary funds awaiting investment or distribution.

(3) A bank may satisfy the collateral requirements of this section with any of the following: (a) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; (b) readily marketable securities of the classes in which banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds

under applicable state law; and (c) surety bonds, to the extent the surety bonds provide adequate security, unless prohibited by applicable law.

(4) A bank, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution unless prohibited by applicable law. The bank may set aside collateral as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, as it would if the deposit was made at the bank, unless such action is prohibited by applicable law.

(5) Public funds deposited in and held by a bank are not subject to this section.

(6) This section does not apply to a fiduciary account in which, pursuant to the terms of the governing instrument, full investment authority is retained by the grantor or is vested in persons or entities other than the bank and the bank, acting in its fiduciary capacity, does not have the power to exert any influence over investment decisions.

Source: Laws 2009, LB327, § 2; Laws 2014, LB788, § 2; Laws 2017, LB140, § 60.

8-163 Dividends; withdrawal of capital or surplus prohibited; not made; when.

(1) No bank shall withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any part of its capital or surplus without the written permission of the director. If losses have at any time been sustained equal to or exceeding the undivided profits on hand, no dividends shall be made without the written permission of the director. No dividend shall be made by any bank in an amount greater than the net profits on hand without the written permission of the director.

(2) As used in this section, net profits on hand means the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets after deducting from the total thereof all current operating expenses, losses, and bad debts, accrued dividends on preferred stock, if any, and federal and state taxes, for the present and two immediately preceding calendar years.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-156; Laws 1963, c. 29, § 63, p. 160; Laws 1988, LB 996, § 3; Laws 2009, LB327, § 5; Laws 2017, LB140, § 61.

8-164 Dividends declared; conditions.

The board of directors of any bank may declare dividends on its capital stock but only under the following conditions:

(1) All bad debts required to be charged off by either the board of directors or the department shall first have been charged off. All debts due any bank on which interest is past due and unpaid for a period of six months, unless such debts are well secured or in the process of collection, shall be considered bad debts within the meaning of this section; and

(2) Twenty percent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

Source: Laws 1909, c. 10, § 28, p. 79; R.S.1913, § 307; Laws 1919, c. 190, tit. V, art. XVI, § 28, p. 696; C.S.1922, § 8009; C.S.1929, § 8142; Laws 1930, Spec. Sess., c. 6, § 11, p. 31; Laws 1933, c. 18, § 27, p. 149; Laws 1935, c. 10, § 1, p. 78; Laws 1937, c. 16, § 1, p. 122; C.S.Supp.,1941, § 8-142; Laws 1943, c. 19, § 4, p. 104; R.S.1943, § 8-143; Laws 1951, c. 10, § 1, p. 82; Laws 1953, c. 7, § 1, p. 71; R.R.S.1943, § 8-143; Laws 1963, c. 29, § 64, p. 160; Laws 1985, LB 653, § 6; Laws 1988, LB 996, § 4; Laws 1994, LB 979, § 6; Laws 2017, LB140, § 62.

8-166 Banks; reports to department; form; number required; verification; waiver.

(1) Every bank shall make to the department not less than two reports during each year according to the form which may be prescribed by the department, which report shall be certified as correct, in the manner prescribed by the department, by the president, vice president, cashier, or assistant cashier and in addition by two members of the board of directors.

(2) The director may waive the requirements of this section if a bank files its reports electronically with the Federal Deposit Insurance Corporation, the Federal Reserve Board, or an electronic collection agent of the Federal Deposit Insurance Corporation or the Federal Reserve Board.

Source: Laws 1909, c. 10, § 17, p. 75; R.S.1913, § 296; Laws 1919, c. 190, tit. V, art. XVI, § 17, p. 692; C.S.1922, § 7998; C.S.1929, § 8-129; Laws 1933, c. 18, § 19, p. 144; Laws 1941, c. 10, § 1, p. 80; C.S.Supp.,1941, § 8-129; R.S.1943, § 8-131; Laws 1957, c. 11, § 1, p. 134; Laws 1961, c. 15, § 2, p. 111; R.R.S.1943, § 8-131; Laws 1963, c. 29, § 66, p. 161; Laws 1997, LB 137, § 7; Laws 2017, LB140, § 63.

8-167 Banks; reports to department; contents; publication.

Each report required by section 8-166 shall exhibit in detail and under appropriate headings the resources and liabilities of the bank at the close of business on any past day specified by the call for report and shall be submitted to the department within thirty days, or as may be required by the department, after the receipt of requisition for the report. A summary of such report in the form prescribed by the department shall be published one time in a legal newspaper in the place where the main office of such bank is located. If there is no legal newspaper in the place where the main office of the bank is located, then such summary shall be published in a legal newspaper published in the same county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such publication shall be at the expense of such bank. Proof of such publication shall be transmitted to the department within thirty days, or as may be required by the director, from the date fixed for such report.

Source: Laws 1909, c. 10, § 18, p. 75; R.S.1913, § 297; Laws 1919, c. 190, tit. V, art. XVI, § 18, p. 693; C.S.1922, § 7999; C.S.1929, § 8-130; Laws 1933, c. 18, § 20, p. 145; Laws 1941, c. 10, § 2, p. 81;

C.S.Supp.,1941, § 8-130; R.S.1943, § 8-132; Laws 1963, c. 29, § 67, p. 161; Laws 1978, LB 641, § 2; Laws 1986, LB 960, § 1; Laws 2017, LB140, § 64.

8-167.01 Banks; publication requirements not applicable; when.

The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350, as such part existed on January 1, 2018.

Source: Laws 1995, LB 384, § 18; Laws 2013, LB213, § 4; Laws 2017, LB140, § 65; Laws 2018, LB812, § 4.
Effective date April 12, 2018.

8-168 Banks; special reports to director.

A bank shall furnish special reports as may be required by the director to enable the department to obtain full and complete knowledge of the condition of the bank.

Source: Laws 1909, c. 10, § 19, p. 76; R.S.1913, § 298; Laws 1919, c. 190, tit. V, art. XVI, § 19, p. 693; C.S.1922, § 8000; C.S.1929, § 8-131; Laws 1933, c. 18, § 21, p. 145; C.S.Supp.,1941, § 8-131; R.S. 1943, § 8-133; Laws 1963, c. 29, § 68, p. 161; Laws 2017, LB140, § 66.

8-169 Banks; reports; published statements; failure to make; penalty, recovery.

Any bank that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Banking Act shall pay to the department a penalty of fifty dollars for each day such failure shall continue, unless the director shall extend the time for filing such report.

Source: Laws 1909, c. 10, § 20, p. 76; R.S.1913, § 299; Laws 1919, c. 190, tit. V, art. XVI, § 20, p. 693; C.S.1922, § 8001; C.S.1929, § 8-132; Laws 1933, c. 18, § 22, p. 146; C.S.Supp.,1941, § 8-132; R.S. 1943, § 8-134; R.R.S.1943, § 8-134; Laws 1963, c. 29, § 59, p. 162; Laws 1973, LB 164, § 18; Laws 1998, LB 1321, § 14; Laws 2017, LB140, § 67.

8-170 Records and files; time required to be kept; destroy, when.

(1) Banks shall not be required to preserve or keep their records or files or copies thereof for a period longer than six years next after the first day of January of the year following the time of the making or filing of such records or files except as provided in subsection (2) of this section.

(2)(a) Ledger sheets showing unpaid balances in favor of depositors of banks shall not be destroyed unless the bank has remitted such unpaid balances to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. Banks shall retain a record of every such remittance for ten years following the date of such remittance.

(b) Corporate records that relate to the corporation or the corporate existence of the bank shall not be destroyed.

(3) All records or files or copies thereof shall be readable or legible.

Source: Laws 1949, c. 10, § 1, p. 71; R.R.S.1943, § 8-1,111; Laws 1963, c. 29, § 70, p. 162; Laws 1999, LB 396, § 10; Laws 2017, LB140, § 68.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

8-171 Records; destruction; liability; excuse for failure to produce.

No liability shall accrue against any bank destroying any records or files in accordance with sections 8-170 to 8-174. In any cause or proceedings in which any such records or files may be called into question or be demanded of the bank or any officer or employee of the bank, a showing that such records or files have been destroyed in accordance with the terms of sections 8-170 to 8-174 shall be a sufficient excuse for the failure to produce such records or files.

Source: Laws 1949, c. 10, § 2, p. 71; R.R.S.1943, § 8-1,112; Laws 1963, c. 29, § 71, p. 162; Laws 2017, LB140, § 69.

8-173 Actions against bank on claims inconsistent with records; accrual of cause of action; limitations.

All causes of action against a bank based upon a claim or claims inconsistent with an entry or entries in any bank record or ledger, made in the regular course of business, shall accrue one year after the date of such entry or entries. No action founded upon such a cause shall be brought after the expiration of five years from the date of such accrual.

Source: Laws 1949, c. 10, § 4, p. 71; Laws 1951, c. 13, § 1, p. 88; R.R.S.1943, § 8-1,114; Laws 1963, c. 29, § 73, p. 163; Laws 2017, LB140, § 70.

8-174 Records and files; destruction; applicable to national banks.

Sections 8-170 to 8-174, so far as may be permitted by the laws of the United States, shall apply to the records and files of national banks.

Source: Laws 1949, c. 10, § 5, p. 72; R.R.S.1943, § 8-1,115; Laws 1963, c. 29, § 74, p. 163; Laws 2017, LB140, § 71.

8-175 Banks; false entry or statement; other offenses relating to books and records; penalty.

Any person who willfully and knowingly subscribes to, or makes, or causes to be made, any false statement or false entry in the books of any bank, knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such bank, makes, states, or publishes any false statement of the amount of the assets or liabilities of any such bank, fails to make true and correct entry in the books and records of such bank of its business and transactions in the manner and form prescribed by the department, mutilates, alters, destroys, secretes, or removes any of the books or records of such bank without the written consent of the director, or makes,

states, or publishes any false statement of the amount of the assets or liabilities of any such bank, is guilty of a Class III felony.

Source: Laws 1909, c. 10, § 21, p. 77; R.S.1913, § 300; Laws 1919, c. 190, tit. V, art. XVI, § 21, p. 694; C.S.1922, § 8002; C.S.1929, § 8-133; Laws 1933, c. 18, § 23, p. 146; C.S.Supp.,1941, § 8-133; R.S. 1943, § 8-135; Laws 1963, c. 29, § 75, p. 163; Laws 1977, LB 40, § 51; Laws 2017, LB140, § 72.

8-177 Banks; consolidation; approval required; creditors' claims.

Any bank, which is in good faith winding up its business for the purpose of consolidating with some other financial institution, may transfer its resources and liabilities to the financial institution with which it is in the process of consolidation, but no consolidation shall be made without the consent of the director, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor in the collection of his or her debt against any such bank or financial institution.

Source: Laws 1909, c. 10, § 41, p. 86; R.S.1913, § 320; Laws 1919, c. 190, tit. V, art. XVI, § 41, p. 701; C.S.1922, § 8021; C.S.1929, § 8-160; Laws 1933, c. 18, § 36, p. 154; C.S.Supp.,1941, § 8-160; R.S. 1943, § 8-164; Laws 1963, c. 29, § 77, p. 164; Laws 2017, LB140, § 73.

8-178 National bank; reorganization as state bank; authorization; vote required; trust company business; conversion; public hearing; when.

(1) Any national bank located and doing business within the State of Nebraska which follows the procedure prescribed by the laws of the United States may convert into a state bank or merge or consolidate with a state bank upon a vote of the holders of at least two-thirds of the capital stock of such state bank when the resulting state bank meets the requirements of the state law as to the formation of a new state bank. If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the trust department to be converted shall meet the requirements of state law as to the formation of a trust company business within a trust department of a state bank.

(2) The public hearing requirement of subdivision (1) of section 8-115.01 and the rules and regulations of the director shall be required only if (a) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the national bank is located, the expense of which shall be paid by the applicant bank, the director receives an objection to the conversion within fifteen days after such publication or (b) in the discretion of the director, the condition of the bank warrants a hearing. If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the notice of the proposed conversion of the national bank shall include notice that the trust department will be converted in connection with the national bank conversion.

Source: Laws 1909, c. 11, § 1, p. 96; R.S.1913, § 343; Laws 1919, c. 190, tit. V, art. XVI, § 63, p. 711; C.S.1922, § 8043; C.S.1929, § 8-161; Laws 1933, c. 18, § 37, p. 154; C.S.Supp.,1941, § 8-161; R.S. 1943, § 8-165; Laws 1951, c. 11, § 1(1), p. 84; R.R.S.1943,

§ 8-165; Laws 1963, c. 29, § 78, p. 165; Laws 1995, LB 599, § 3; Laws 2002, LB 957, § 5; Laws 2006, LB 876, § 10; Laws 2017, LB140, § 74.

8-179 National bank; reorganization as state bank; procedure; trust company business; charter.

(1) The resulting state bank under section 8-178 shall file a statement with the department, under the oath of its president or cashier, (a) showing that the procedure prescribed by the laws of the United States and by this state have been followed, (b) setting forth in the statement the matter prescribed by sections 8-1901 to 8-1903, and (c) if the national bank has been further chartered to conduct a trust company business within a trust department of the bank, setting forth the matter prescribed by sections 8-159 to 8-162.01. Upon payment of all applicable fees, the department shall issue to such corporation, a charter to transact the business provided for in its articles of incorporation, and, if applicable, a charter to conduct a trust company business within a trust department of the bank.

(2) The department may accept good assets of any such national bank, worth not less than par, in lieu of the payment otherwise provided by law for the stock of such resulting bank. When the parties requesting the conversion, merger, or consolidation are officers or directors of either the national bank or of the state bank, they shall be accepted without investigation as parties of integrity and responsibility. Unless the resulting bank is at a different location than the former national or state bank, the department shall recognize the public necessity, convenience, and advantage of permitting the resulting bank and, if applicable, the trust company business within a trust department of the bank, to engage in business.

Source: Laws 1951, c. 11, § 1(2), p. 84; R.R.S.1943, § 8-165.01; Laws 1963, c. 29, § 79, p. 165; Laws 1995, LB 384, § 5; Laws 2006, LB 876, § 11; Laws 2017, LB140, § 75.

8-180 State bank; reorganization as national bank; vote required.

Any state bank, without the approval of any state authority, may, upon a vote of the holders of at least two-thirds of its capital stock, convert into and merge or consolidate with a national bank as provided by federal law.

Source: Laws 1951, c. 11, § 1(3), p. 85; R.R.S.1943, § 8-165.02; Laws 1963, c. 29, § 80, p. 165; Laws 2017, LB140, § 76.

8-182 State bank; conversion, merger, or consolidation with a national bank; objecting stockholders; stock; payment.

The owner of shares of a state bank which were voted against a conversion into or a merger or consolidation with a national bank under section 8-181 shall be entitled to receive, from the assets of such state bank, the value of such stock in cash, when the conversion, merger, or consolidation becomes effective, upon written demand made to the resulting bank at any time within thirty days after the effective date of the conversion, merger, or consolidation, accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the shareholders' meeting approving the conversion, merger, or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the conversion, merger, or

consolidation, one by the board of directors of the resulting state bank, and the third by the two so chosen. If the appraisal is not completed within sixty days after the conversion, merger, or consolidation becomes effective the department shall cause an appraisal to be made and such appraisal shall then govern. The expenses of appraisal shall be paid by the resulting bank.

Source: Laws 1951, c. 11, § 1(5), p. 85; R.R.S.1943, § 8-165.04; Laws 1963, c. 29, § 82, p. 166; Laws 2017, LB140, § 77.

8-183 National or state bank; conversion, merger, or consolidation; resulting bank; assets; valuation.

Without approval by the director, no asset shall be carried on the books of the bank resulting pursuant to section 8-181, when the resulting bank is a state bank, at a valuation higher than that on the books of the converting, merging, or consolidating bank at the time of the examination, by a state or national bank examiner, last occurring before the effective date of the conversion, merger, or consolidation.

Source: Laws 1951, c. 11, § 1(6), p. 86; R.R.S.1943, § 8-165.05; Laws 1963, c. 29, § 83, p. 167; Laws 2017, LB140, § 78.

8-183.04 State or federal savings association; mutual savings association; retention of mutual form authorized.

(1) Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank.

(2) All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association.

(3) The amount and type of capital required for such a converted savings association shall be as required for federal mutual savings associations in 12 C.F.R. part 567, as such part existed on January 1, 2018, except that if at any time the department determines that the capital of such a converted savings association is impaired, the director may require the members to make up the capital impairment.

(4) The director may adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to 8-384 governing savings associations in mutual form of corporate organization.

Source: Laws 1998, LB 1321, § 30; Laws 2005, LB 533, § 10; Laws 2010, LB890, § 5; Laws 2017, LB140, § 79; Laws 2018, LB812, § 5. Effective date April 12, 2018.

8-183.05 State or federal savings association; issuance of state bank charter; effect; section, how construed.

(1) Upon the issuance of a state bank charter to a converting savings association, the corporate existence of the converting savings association shall not terminate, but such bank shall be a continuation of the entity so converted and all property of the converted savings association, including its rights, titles,

and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and remain the property of such converted savings association, and the same shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting savings association.

(2) Upon issuance of the charter, the new state bank shall continue to have and succeed to all the rights, obligations, and relations of the converting savings association.

(3) All pending actions and other judicial proceedings to which the converting savings association is a party shall not be abated or discontinued by reason of such conversion but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made, and such converted savings association may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against the converting savings association theretofore involved in the proceedings.

(4) Nothing in this section shall be construed to authorize a converted savings association to establish branches except as permitted by section 8-157 and the Interstate Branching and Merger Act. This subsection shall not be construed to require divestiture of any branches of a savings association in existence at the time of the conversion to a state bank charter.

Source: Laws 1998, LB 1321, § 31; Laws 2002, LB 1089, § 4; Laws 2012, LB963, § 3; Laws 2017, LB140, § 80.

Cross References

Interstate Branching and Merger Act, see section 8-2101.

8-184 Voluntary liquidation; approval required; examination; fees.

Whenever any bank shall desire to go into voluntary liquidation, it shall first obtain the written consent of the director who may, before granting such request, order a special examination of the affairs of such bank, for which the same fees may be collected as in regular examination.

Source: Laws 1909, c. 10, § 34, p. 83; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 153; C.S.Supp., 1941, § 8-153; R.S. 1943, § 8-158; Laws 1963, c. 29, § 84, p. 167; Laws 2017, LB140, § 81.

8-185 Voluntary liquidation; procedure.

Any bank may voluntarily liquidate by paying off all its depositors in full. The bank so liquidating shall file a certified statement with the department, setting forth the fact that all its liabilities have been paid and naming its stockholders with the amount of stock held by each, and surrender its charter. The department shall cause an examination to be made of any such bank for the purpose of determining that all of its liabilities, except liabilities to stockholders, have been paid. Upon such examination, if it appears that all liabilities other than

liabilities to stockholders have been paid, the bank shall cease to be subject to the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 42, p. 86; R.S.1913, § 321; Laws 1919, c. 190, tit. V, art. XVI, § 42, p. 702; Laws 1921, c. 299, § 1, p. 954; C.S.1922, § 8022; C.S.1929, § 8-169; Laws 1933, c. 18, § 39, p. 155; C.S.Supp.,1941, § 8-169; R.S.1943, § 8-159; Laws 1963, c. 29, § 85, p. 167; Laws 1987, LB 2, § 10; Laws 1998, LB 1321, § 15; Laws 2017, LB140, § 82.

8-186 Bank; possession; voluntary surrender to department; notice; posting; liens dissolved.

Any bank may place its affairs and assets under the control of the department by posting on its door the following notice: This bank is in the hands of the Department of Banking and Finance. The posting of such notice, or the taking possession of any bank by the department or by any financial institution examiner shall be sufficient to place all of its assets of whatever nature immediately in the possession of the department, and shall operate as a bar to the levying of attachments or executions thereon, and shall operate to dissolve and release all levies, judgment liens, attachments, or other liens obtained through legal proceedings within sixty days next preceding the posting of such notice or the taking possession of such bank by the department.

Source: Laws 1909, c. 10, § 43, p. 86; R.S.1913, § 322; Laws 1919, c. 190, tit. V, art. XVI, § 43, p. 703; C.S.1922, § 8023; C.S.1929, § 8-170; Laws 1933, c. 18, § 40, p. 156; C.S.Supp.,1941, § 8-170; R.S. 1943, § 8-172; Laws 1963, c. 29, § 86, p. 168; Laws 2017, LB140, § 83.

8-187 Banks; department may take possession; when; examination of affairs; liens dissolved; retention of possession.

Whenever it appears to the director from any examination or report provided for by the laws of this state that (1) the capital of any bank is impaired, (2) a bank is conducting its business in an unsafe or unauthorized manner, (3) a bank is endangering the interests of its depositors, (4) a bank, upon its failure, refuses to make any of the reports or statements required by the laws of this state, (5) the officers or employees of any bank refuse to submit its books, papers, and affairs to the inspection of any examiner, (6) any officer of a bank refuses to be examined upon oath touching the affairs of the bank, (7) from any examination or report provided for by law, the director has reason to conclude that a bank is in an unsafe or unsound condition to transact the business for which it is organized or that it is unsafe and inexpedient for the bank to continue its business, or (8) a bank neglects or refuses to observe any order of the director, the department may immediately take possession of the property and business of the bank, conduct the affairs of the bank, and retain possession of all money, rights, credits, assets, and property of every description belonging to the bank, as against any mesne or final process issued by any court against the bank whose property has been taken and retain possession for a sufficient time to make an examination of its affairs and dispose of such property as provided by law. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against the bank or its property, acquired within sixty days next preceding the taking of possession of the bank, in the event the

bank is liquidated and the business of the bank is not resumed or carried on after the taking of possession of the bank by the department, shall be void and the property affected by the levy, judgment lien, attachment, or other lien so obtained shall be wholly discharged and released from any levy, judgment lien, attachment, or other lien. The department shall retain possession of the property and business of the bank until the bank resumes business or its affairs are finally liquidated under the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 48, p. 89; R.S.1913, § 328; Laws 1919, c. 190, tit. V, art. XVI, § 49, p. 705; C.S.1922, § 8029; Laws 1923, c. 191, § 11, p. 443; Laws 1925, c. 30, § 1, p. 122; Laws 1929, c. 38, § 16, p. 164; C.S.1929, § 8-181; Laws 1933, c. 18, § 42, p. 157; C.S.Supp.,1941, § 8-181; R.S.1943, § 8-173; Laws 1963, c. 29, § 87, p. 168; Laws 1987, LB 2, § 11; Laws 1998, LB 1321, § 16; Laws 2017, LB140, § 84.

8-188 Banks; possession by department; effective upon notice.

The director or any deputy, counsel, or examiner authorized by the director may, on behalf of the department, take possession of a bank by handing to the president, cashier, or any person in charge of the bank, a written notice that the bank is in the possession of the department.

Source: Laws 1925, c. 30, § 2, p. 123; C.S.1929, § 8-183; Laws 1933, c. 18, § 45, p. 159; C.S.Supp.,1941, § 8-183; R.S.1943, § 8-174; Laws 1963, c. 29, § 88, p. 169; Laws 2017, LB140, § 85.

8-189 Banks; attempted prevention of possession by department; penalty.

Any officer, director, or employee of a bank who attempts to prevent the department from taking possession of such bank is guilty of a Class I misdemeanor.

Source: Laws 1923, c. 191, § 14, p. 445; C.S.1929, § 8-184; Laws 1933, c. 18, § 46, p. 159; C.S.Supp.,1941, § 8-184; R.S.1943, § 8-175; Laws 1963, c. 29, § 89, p. 169; Laws 1977, LB 40, § 52; Laws 2017, LB140, § 86.

8-190 Banks; possession by department; refusal to deliver; possession by banks; application for court order.

Whenever any bank refuses or neglects to deliver possession of its affairs, assets, or property of whatever nature to the department or to any person ordered or appointed to take charge of such bank according to the Nebraska Banking Act, the director shall make an application to the district court of the county in which the main office of such bank is located or to any judge of such court for an order placing the department or such person in charge thereof and of its affairs and property. If the judge of the district court having jurisdiction is absent from the district at the time such application is to be made, any judge of the Court of Appeals or Supreme Court may grant such order, but the petition and order of possession shall be immediately transmitted to the clerk of the district court of the county in which the main office of such bank is located.

Source: Laws 1909, c. 10, § 56, p. 94; R.S.1913, § 336; Laws 1919, c. 190, tit. V, art. XVI, § 57, p. 709; C.S.1922, § 8037; C.S.1929, § 8-185; Laws 1933, c. 18, § 47, p. 159; C.S.Supp.,1941, § 8-185; R.S.

1943, § 8-176; Laws 1963, c. 29, § 90, p. 170; Laws 1987, LB 2, § 12; Laws 1991, LB 732, § 12; Laws 1998, LB 1321, § 17; Laws 2017, LB140, § 87.

8-191 Banks; possession by department; notice to banks and trust companies; notice or knowledge of possession forestalls liens.

Upon taking possession of the property and business of any bank, the department shall immediately give notice of such fact by letter or electronic mail to all banks or trust companies holding or in possession of any assets of such bank, so far as known by the department. No bank or trust company so notified or knowing of such possession by the department shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank of whose property and business the department shall have taken possession unless the bank be continued as a going concern.

Source: Laws 1923, c. 191, § 16, p. 445; C.S.1929, § 8-187; Laws 1933, c. 18, § 49, p. 160; C.S.Supp.,1941, § 8-187; R.S.1943, § 8-177; Laws 1963, c. 29, § 91, p. 170; Laws 2017, LB140, § 88.

8-192 Banks; possession by department; inventory of assets and liabilities; filing.

Upon taking charge of any bank, the director shall cause to be made an inventory in triplicate of all the property, assets, and liabilities of the bank so far as the property, assets, and liabilities of the bank can be ascertained. One copy of the inventory shall be filed with the director, one copy of the inventory retained in the bank, and, after the declaration of insolvency of the bank as provided in section 8-194, one copy of the inventory shall be filed with the clerk of the district court of the county in which the main office of the bank is located.

Source: Laws 1929, c. 38, § 21, p. 167; C.S.1929, § 8-188; Laws 1933, c. 18, § 50, p. 161; C.S.Supp.,1941, § 8-188; R.S.1943, § 8-178; Laws 1963, c. 29, § 92, p. 170; Laws 2017, LB140, § 89.

8-193 Banks; redelivery of possession; bond; departmental supervision; re-possession by department.

Whenever the officers, directors, stockholders, or owners of any insolvent bank give good and sufficient bond running to the department with an incorporated surety company authorized by the laws of this state to transact such business, conditioned upon the full settlement of all the liabilities of such bank by such officers, directors, stockholders, or owners within a stated time, and the bond is approved by the director, then the department shall turn over all the assets of such bank to the officers, directors, stockholders, or owners of the bank furnishing the bond, reserving the same right to require report of the condition and to examine into the affairs of the bank as existed in the department previous to its closing. If, upon such examination, it is found by the department that the officers, directors, stockholders, or owners are not closing up the affairs of the bank in such manner as to discharge its liabilities and to close up its affairs in a manner satisfactory to the department within a

reasonable time, the department shall take immediate possession of the bank for liquidation under the Nebraska Banking Act.

Source: Laws 1919, c. 190, tit. V, art. XVI, § 8, p. 688; C.S.1922, § 7989; Laws 1923, c. 191, § 13, p. 444; C.S.1929, § 8-189; Laws 1933, c. 18, § 51, p. 161; C.S.Supp.,1941, § 8-189; R.S.1943, § 8-179; Laws 1963, c. 29, § 93, p. 171; Laws 1987, LB 2, § 13; Laws 1998, LB 1321, § 18; Laws 2017, LB140, § 90.

8-194 Insolvent banks; determination; declaration by director; filing.

Upon determination of insolvency of any bank by the director and failure of the stockholders or owners to restore solvency within the time and in the manner provided by law, or upon violation of the laws of the state by the bank, the director shall make a finding in writing of the condition of the affairs of such bank and a declaration of insolvency and such finding and declaration shall be filed with the clerk of the district court of the county in which the main office of such bank is located.

Source: Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-180; Laws 1963, c. 29, § 94, p. 171; Laws 2017, LB140, § 91.

8-195 Insolvent banks; possession by department; petition to enjoin; show cause order; findings by district court; disposition of case.

Whenever any bank of whose property and business the department has taken possession or whose insolvency has been declared under section 8-194 deems itself aggrieved by such actions, it may, at any time not later than ten days after such declaration of insolvency has been filed with the clerk of the district court of the county in which the main office of the bank is located, petition the district court to enjoin further proceedings. The court, after citing the Director of Banking and Finance to show cause why further proceedings should not be enjoined, hearing the allegations and proofs of the parties, and determining the facts, may, upon proof by the bank, its officers, or its directors that it is solvent, that the business of the bank has been and is being conducted as provided by law, that it is not endangering the interests of its depositors and other creditors, and that the Director of Banking and Finance has acted arbitrarily and abused his or her discretion either by taking possession of the bank or by finding and declaring the bank to be insolvent and ordering its liquidation, set aside such declaration of insolvency and enjoin the director from proceeding further, and direct him or her to surrender the business and property to the bank. On proof that the bank is insolvent and that its stockholders or owners have failed to restore solvency as provided by law, or that the bank is being operated in violation of law, and that the director has acted within his or her powers, the petition shall be dismissed by the court.

Source: Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-181; Laws 1963, c. 29, § 95, p. 172; Laws 2017, LB140, § 92.

8-196 Insolvent banks; liquidation; injunction; appeal; bond.

An appeal under section 8-195 shall operate as a stay of judgment of the district court, and no bond need be given if the appeal is taken by the director. If the appeal is taken by the bank, a bond shall be given as required by law for an appeal in civil cases.

Source: Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-182; Laws 1963, c. 29, § 96, p. 172; Laws 1991, LB 732, § 13; Laws 2017, LB140, § 93.

8-197 Insolvent banks; liquidation by Federal Deposit Insurance Corporation or by liquidating trustees.

(1) Pending final judgment on the petition to enjoin under section 8-195, the department shall retain possession of the property and business of the bank. If not enjoined, the director shall proceed to liquidate the affairs of the bank as provided in the Nebraska Banking Act, except that: (a) The Federal Deposit Insurance Corporation may, under the laws of this state, accept the appointment as receiver or liquidating agent of any insolvent bank the deposits of which are insured by the Federal Deposit Insurance Corporation; or (b) when any bank is declared insolvent and ordered to be liquidated and the deposits of such bank are not insured by the Federal Deposit Insurance Corporation, then depositors and other creditors of such insolvent bank, representing fifty-one percent or more of the deposits and other claims in number and in amount of the total thereof, shall have the right to liquidate such insolvent bank by and through liquidating trustees, who shall have the same power as the department and the director to liquidate such bank if, within thirty days after the filing of the declaration of insolvency, articles of trusteeship executed and acknowledged by fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, are filed with the director. The articles creating the trusteeship shall be in writing, shall name the trustees, shall state the terms and conditions of such trust, and shall become effective when it is determined by the director that fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, have signed and acknowledged the same. All nonconsenting depositors and other creditors of the insolvent bank shall be held to be subject to the terms and conditions of such trusteeship to the same extent and with the same effect as if they had joined in the execution thereof, and their respective claims shall be treated in all respects as if they had joined in the execution of such articles of trusteeship. Upon finding that such articles have been executed and acknowledged as provided in this section, the director shall thereupon transfer all of the assets of the insolvent bank to such liquidating trustees and take their receipt therefor, and all duties and responsibilities of the department and the director as otherwise provided by law with respect to such liquidation shall be assumed by such liquidating trustees. The director shall then be relieved from further responsibility in connection therewith, and the director and the person who issued the applicable bond or equivalent commercial insurance policy shall be released from further liability on the director's official bond or equivalent commercial insurance policy in respect to such liquidation. The trustees shall then proceed to liquidate such bank as nearly as may be in the manner provided by law for the liquidation of insolvent banks by the department acting as receiver and liquidating agent.

(2) When the Federal Deposit Insurance Corporation or any party other than the department is appointed receiver and liquidating agent of an insolvent bank or other financial institution chartered by the department, all references to the department or the director as provided in the act for the liquidation of such banks and financial institutions shall mean the Federal Deposit Insurance Corporation or other appointed receiver and liquidating agent.

Source: Laws 1933, c. 18, § 53, p. 163; Laws 1935, c. 16, § 1, p. 90; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-183; Laws 1963, c. 29, § 97, p. 173; Laws 1987, LB 2, § 14; Laws 1988, LB 994, § 1; Laws 1998, LB 1321, § 19; Laws 2004, LB 884, § 5; Laws 2017, LB140, § 94.

8-198 Financial institutions; designation of receiver and liquidating agent; department; powers.

The department may be designated the receiver and liquidating agent for any financial institution chartered by the department and, subject to the district court's supervision and control, may proceed to liquidate such financial institution or reorganize it in accordance with the Nebraska Banking Act.

Source: Laws 1929, c. 38, § 11, p. 163; C.S.1929, § 8-192; Laws 1933, c. 18, § 52, p. 162; Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 180, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-184; Laws 1963, c. 29, § 98, p. 174; Laws 1985, LB 653, § 7; Laws 1998, LB 1321, § 20; Laws 2017, LB140, § 95.

8-199 Financial institutions; department as receiver; powers; no compensation to director.

Whenever the department has been designated receiver for a financial institution chartered by the department, the department shall have all the powers and privileges provided by the laws of this state with respect to any other receiver and such incidental powers as shall be necessary to carry out an orderly and efficient liquidation or reorganization of any such financial institution for which the department may have become receiver, either by operation of law or by judicial appointment. Acting by and through the director, the department may in its own name as such receiver enforce on behalf of such financial institution or its creditors, shareholders, or owners, by actions at law or in equity, all debts or other obligations of whatever kind or nature due to such financial institution or the creditors or shareholders thereof. In like manner, the department may make, execute, and deliver any and all deeds, assignments, and other instruments necessary and proper to effectuate any sale of real or personal property, or the settlement of any obligations belonging or due to such financial institution for which the department may have become receiver, or its creditors, shareholders, or owners, when such sale or settlement is approved by the district court of the county in which the main office of such financial institution is located. The director shall receive no fees, salary, or other compensation for his or her services in connection with the liquidation or reorganization of such financial institutions other than his or her salary.

Source: Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 180, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-185; Laws 1963, c. 29, § 99, p. 174; Laws 1985, LB 653, § 8; Laws 2017, LB140, § 96.

8-1,100 Insolvent banks; liquidation; special deputies, assistants, counsel; appointment; compensation; discharge.

The director may, under his or her hand and official seal, appoint such special deputies or assistants as he or she may find necessary for the efficient and economical liquidation of insolvent banks, with powers specified in the certificate of appointment, to assist him or her in the liquidation. The certificate shall be filed with the director and a certified copy with the clerk of the district court of the county in which the main office of such bank is located. He or she may also employ such counsel and expert assistance as may be necessary to perform the work of liquidation. He or she shall, subject to the approval of the district court of the county in which the main office of the insolvent bank is located, fix the compensation for the services rendered by such special deputies, assistants, and counsel, which shall be taxed as costs of the liquidation. He or she may discharge such special deputies, assistants, or counsel at any time or may assign them to one or more liquidations or transfer them from one liquidation to another.

Source: Laws 1929, c. 38, § 13, p. 163; C.S.1929, § 8-194; Laws 1933, c. 18, § 56, p. 164; Laws 1933, c. 96, § 2, p. 382; C.S.Supp.,1941, § 8-194; R.S.1943, § 8-186; Laws 1963, c. 29, § 100, p. 175; Laws 2017, LB140, § 97.

8-1,101 Insolvent banks; liquidation; special deputies, assistants; bond or insurance; conditions.

Upon the declaration of insolvency, the director shall require bonds or equivalent commercial insurance policies from the special deputies or assistants in sums and with such condition as the director shall specify, to be approved by the district court. The costs of any such bond or policy shall be taxed as costs in the liquidation. Such bond or policy shall be conditioned for the faithful performance of duty, and include indemnity to the department as receiver and liquidating agent.

Source: Laws 1929, c. 38, § 14, p. 164; C.S.1929, § 8-195; Laws 1933, c. 18, § 60, p. 165; C.S.Supp.,1941, § 8-195; R.S.1943, § 8-187; Laws 1963, c. 29, § 101, p. 175; Laws 2004, LB 884, § 6; Laws 2017, LB140, § 98.

8-1,102 Insolvent banks; department as receiver and liquidating agent; liens dissolved; assets; transfers to defraud creditors; preferences.

Upon the declaration of insolvency of a bank by the director, the department shall become the receiver and liquidating agent to wind up the business of that bank, and the department shall be vested with the title to all of the assets of such bank wherever the assets may be situated and whatever kind and character such assets may be, as of the date of the filing of the declaration of insolvency with the clerk of the district court of the county in which the main office of such bank is located. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against such bank or its property acquired within sixty days next preceding the filing of the declaration of insolvency shall be void, and the property affected by the levy, judgment lien, attachment, or other lien obtained through legal proceedings, shall be wholly discharged and released therefrom. If at any time within sixty days prior to the taking over by the director of a bank which is later declared insolvent any

transfers of the assets of such bank are made to prevent liquidation and distribution of such assets to the bank's creditors as provided in the Nebraska Banking Act or if any transfers are made so as to create a preference of one creditor over another, such transfers shall be void and the director shall be entitled to recover such assets for the benefit of the trust.

Source: Laws 1933, c. 18, § 54, p. 163; C.S.Supp.,1941, § 8-1,127; R.S. 1943, § 8-188; Laws 1963, c. 29, § 102, p. 176; Laws 1987, LB 2, § 15; Laws 1998, LB 1321, § 21; Laws 2017, LB140, § 99.

8-1,103 Insolvent banks; liquidation; Director of Banking and Finance; powers.

For the purpose of executing and performing any of the powers and duties hereby conferred upon him or her, the director may, in the name of the department or the insolvent bank or in his or her own name as director, prosecute and defend any and all actions and other legal proceedings and may, in the name of the department or the insolvent bank or in his or her own name as director, execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or sale or compromise authorized by order of the court as provided in the Nebraska Banking Act. Any deed or other instrument executed pursuant to such authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the insolvent bank by authority of its board of directors.

Source: Laws 1933, c. 18, § 58, p. 165; C.S.Supp.,1941, § 8-1,129; R.S. 1943, § 8-189; Laws 1963, c. 29, § 103, p. 176; Laws 1987, LB 2, § 16; Laws 1998, LB 1321, § 22; Laws 2017, LB140, § 100.

8-1,104 Insolvent banks; liquidation; director; collection of debts; sale or compromise of certain debts; procedure; deposit or investment of funds.

Upon taking possession of the property and business of any bank, the director shall collect all money due to such bank and do such other acts as are necessary to conserve its assets and business and, on declaration of insolvency, he or she shall proceed to liquidate the affairs of the bank under the Nebraska Banking Act. He or she shall collect all debts due to and belonging to the bank. If he or she desires to sell or compromise any or all bad or doubtful debts or any or all of the real and personal property of such bank, he or she shall apply to the district court of the county in which the main office of the bank is located for an order permitting such sale or compromise on such terms and in such manner as the court may direct. All money so collected by the director may be, from time to time, deposited in one or more state banks or national banks. No deposits of such money shall be made unless a pledge of assets, a guaranty bond, or both are given as security for such deposit. All depository banks are authorized to give such security. The director may invest a portion or all of such money in short-time interest-bearing securities of the federal government.

Source: Laws 1933, c. 18, § 67, p. 169; C.S.Supp.,1941, § 8-1,131; R.S. 1943, § 8-190; Laws 1963, c. 29, § 104, p. 177; Laws 1987, LB 2, § 17; Laws 1998, LB 1321, § 23; Laws 2017, LB140, § 101.

8-1,105 Insolvent banks; reorganization or liquidation proceedings; district judge; jurisdiction.

In any proceeding in connection with the insolvency, liquidation, or reorganization of a bank of which a district court has jurisdiction, a judge of the district court shall exercise such jurisdiction in any county in the judicial district for which he or she was appointed to perform any official act in the manner and with the same effect as he or she might exercise in the county in which the matter arose, or to which it may have been transferred, and he or she may perform any such act in chambers with the same effect as in open court.

Source: Laws 1925, c. 30, § 16, p. 131; C.S.1929, § 8-191; Laws 1933, c. 18, § 55, p. 163; C.S.Supp.,1941, § 8-191; R.S.1943, § 8-191; Laws 1963, c. 29, § 105, p. 178; Laws 2017, LB140, § 102.

8-1,106 Insolvent banks; claims; filing; time limit.

The director, within twenty days after the declaration of insolvency of a bank, shall file with the clerk of the district court of the county in which the main office of such bank is located, a list setting forth the name and address of each of the creditors of such bank as shown by the books thereof or who are known by the director to be creditors, and within thirty days after filing the list of creditors, he or she shall also file an order fixing the time and place for filing claims against such bank. The time fixed for filing claims shall not be more than sixty days nor less than thirty days from the date of the filing of the order, and within seven days after the filing of such order, the director shall mail to each known creditor of such bank a copy of the order and a blank form for proof of claim. The director shall also post a copy of the order on the door of the bank, and within two weeks from the date of the order he or she shall cause notice to be given by publication, in such newspapers as he or she may direct, once each week for two successive weeks, calling on all persons who may have claims against the bank to present them to the director within the time and the place provided for in the order and to make proof thereof. Such claims shall be sworn to by the creditor or his or her representative. Any claim, other than claims for deposits and exchange, not presented and filed within the time fixed by such order shall be forever barred. Claims for deposits or exchange as shown by the books of the bank presented after the expiration of the time fixed in the order for filing claims may be allowed by the director upon a showing being made by the creditor, within six months from the date of the expiration of the time for filing claims as fixed by the order, that he or she did not have knowledge of the closing of the bank and did not receive notice within time to permit the filing of his or her claim before the time fixed for filing claims had expired.

Source: Laws 1923, c. 191, § 21, p. 448; C.S.1929, § 8-198; Laws 1933, c. 18, § 62, p. 167; C.S.Supp.,1941, § 8-198; R.S.1943, § 8-192; Laws 1963, c. 29, § 106, p. 178; Laws 2017, LB140, § 103.

8-1,107 Insolvent banks; claims; listing and classification; notice to claimant; filing of objection; powers and duties of director.

(1) Upon the expiration of the time fixed for presentation of claims, the director shall thoroughly investigate all claims and file with the clerk of the district court of the county in which the main office of the insolvent bank is located a complete list of all claims against which he or she knows of no defense and which, in his or her judgment, are valid, designating their priority of payment, together with a list of the claims which, in his judgment, are

invalid. He or she shall also file an order allowing or rejecting such claims as classified.

(2) When the director reclassifies or rejects a claim, which rejection shall be made when he or she doubts the legality of a claim, he or she shall serve written notice of such reclassification or rejection upon the claimant by either registered or certified mail and file, with the clerk of the district court of the county in which the main office of the bank is located, an affidavit of the service of such notice, which affidavit shall be prima facie evidence of such service. Such notice shall state the time and place for the filing by claimant of his or her objections to the classification, reclassification, or rejection of his or her claim.

Source: Laws 1923, c. 191, § 22, p. 449; C.S.1929, § 8-199; Laws 1930, Spec. Sess., c. 6, § 9, p. 30; Laws 1933, c. 18, § 63, p. 168; C.S.Supp.,1941, § 8-199; R.S.1943, § 8-193; Laws 1957, c. 242, § 4, p. 818; R.S.1943, § 8-193; Laws 1963, c. 29, § 107, p. 179; Laws 2017, LB140, § 104.

8-1,108 Insolvent banks; claims; objections to classification; hearing.

Any person objecting to the classification of his or her claim and the order based thereon must, within thirty days of the filing of the classification and order with the clerk of the district court, begin an action in that court asking to reclassify his or her claim and to set aside the order of the director. Notice of this action shall be given by the service of a copy of the petition therein upon the director, who shall, within thirty days of such service, file his or her answer or other pleading. The court shall then set the matter for hearing at the earliest convenient date and shall try and determine the issues according to the usual procedure in matters of equity.

Source: Laws 1923, c. 191, § 23, p. 449; C.S.1929, § 8-1,100; Laws 1930, Spec. Sess., c. 6, § 10, p. 31; Laws 1933, c. 18, § 64, p. 168; C.S.Supp.,1941, § 8-1,100; R.S.1943, § 8-194; Laws 1963, c. 29, § 108, p. 179; Laws 2017, LB140, § 105.

8-1,109 Insolvent banks; claims; certificate of indebtedness; assignment; payments endorsed on certificate.

Upon the allowance of a claim against an insolvent bank, the director shall, upon request of the claimant, issue and deliver to the claimant a certificate of indebtedness showing the amount of the claim, the date of the allowance thereof, and whether such claim is one having priority of payment or is a general claim. Any assignment of a claim or certificate of indebtedness shall be filed with the director and shall not be binding until so filed. Upon payment of any distribution on a claim, evidenced by a certificate of indebtedness, such certificate shall be presented and an endorsement of such payment shall be made on the certificate.

Source: Laws 1929, c. 38, § 22, p. 167; C.S.1929, § 8-1,101; Laws 1933, c. 18, § 65, p. 169; C.S.Supp.,1941, § 8-1,101; R.S.1943, § 8-195; Laws 1963, c. 29, § 109, p. 180; Laws 2017, LB140, § 106.

8-1,110 Insolvent banks; claims; priority.

The claims of depositors for deposits not otherwise secured and claims of holders of exchange shall have priority over all other claims, except federal, state, county, and municipal taxes. Such claims shall, at the time of the

declaration of insolvency of a bank, be a first lien on all the assets of the bank from which they are due. No claim to priority shall be allowed which is based upon any evidence of indebtedness in the hands of or originally issued to any stockholder, officer, or employee of such bank and which represents money obtained by such stockholder, officer, or employee from himself, herself, or some other person, firm, corporation, or bank in lieu of or for the purpose of effecting a loan of funds to such failed bank.

Source: Laws 1909, c. 10, § 52, p. 92; R.S.1913, § 332; Laws 1919, c. 190, tit. V, art. XVI, § 53, p. 707; C.S.1922, § 8033; Laws 1923, c. 191, § 24, p. 450; Laws 1925, c. 30, § 12, p. 129; Laws 1929, c. 38, § 19, p. 166; Laws 1929, c. 39, § 1, p. 169; C.S.1929, § 8-1,102; Laws 1930, Spec. Sess., c. 6, § 7, p. 28; Laws 1933, c. 18, § 66, p. 169; Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-196; Laws 1963, c. 29, § 110, p. 180; Laws 2017, LB140, § 107.

8-1,111 Insolvent banks; priority; not affected by federal deposit insurance.

When a bank whose deposits are insured by the Federal Deposit Insurance Corporation becomes insolvent, neither the deposits in the bank nor the exchange of such bank shall be deemed to be otherwise secured by reason of such insurance for purposes of section 8-1,110.

Source: Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-197; Laws 1963, c. 29, § 111, p. 181; Laws 2017, LB140, § 108.

8-1,112 Insolvent banks; director; payment of dividends.

At any time after the expiration of the date fixed for the presentation of claims, the district court may by order, upon the application of the director, authorize the director to declare out of the funds remaining in his or her hands, after the payment of expenses, one or more distributions, and at the earliest possible date the director shall declare a final distribution as may be directed by the district court of the county in which the main office of such bank is located.

Source: Laws 1933, c. 18, § 69, p. 170; C.S.Supp.,1941, § 8-1,133; R.S. 1943, § 8-198; Laws 1963, c. 29, § 112, p. 181; Laws 2017, LB140, § 109.

8-1,113 Insolvent banks; liquidation expenses; allocation; certification.

The director shall from time to time allocate to the various banks in liquidation the expenses of the department by reason of such liquidation, other than the compensation and expense of the special deputy or assistant in charge and the fees for legal services directly incident to the bank in liquidation. The director shall certify to the various district courts of the counties in which the banks in process of liquidation are located the amount of the expenses allocated, which shall be taxed and paid as costs in the liquidation.

Source: Laws 1933, c. 18, § 57, p. 164; C.S.Supp.,1941, § 8-1,128; R.S. 1943, § 8-199; Laws 1963, c. 29, § 113, p. 181; Laws 2017, LB140, § 110.

8-1,115 Insolvent banks; liquidation; reports to district court; dissolution of bank; cancellation of charter.

The director shall from time to time make and file with the clerk of the district court of the county in which the main office of the insolvent bank is located a report of his or her acts of liquidation of each insolvent bank. He or she shall, upon the completion of the liquidation, file a final report, notice of which shall be given as the court may direct, and on hearing thereon and approval thereof by the court such liquidation shall be declared closed and the corporation dissolved. The director shall then cancel the charter issued to such bank pursuant to section 8-122.

Source: Laws 1933, c. 18, § 68, p. 170; C.S.Supp.,1941, § 8-1,132; R.S. 1943, § 8-1,101; Laws 1963, c. 29, § 115, p. 182; Laws 2017, LB140, § 111.

8-1,116 Insolvent banks; stockholders; restoration of solvency; conditions.

After the department has taken possession of any bank under the Nebraska Banking Act, the stockholders of the bank may repair its credit, restore or substitute its reserves, and otherwise place it in safe condition. Such bank shall not be permitted to reopen its business until the director, after careful investigation of its affairs, is of the opinion that its stockholders have complied with the law, that the bank's credit and funds are in all respects repaired, that its reserves are restored or are sufficiently substituted, and that it should be permitted again to reopen for business, at which time the director may issue written permission for resumption of business under its charter.

Source: Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,102; Laws 1963, c. 29, § 116, p. 182; Laws 1987, LB 2, § 18; Laws 1998, LB 1321, § 24; Laws 2017, LB140, § 112.

8-1,117 Banks; impaired capital; assessments on stock to restore; preferred stock excepted.

If the capital of a bank becomes impaired, whether the department has taken possession of the bank or not, and if stockholders representing eighty-five percent or more of the common capital stock of the bank, with a view of restoring the impaired capital, shall, with the approval of the department, authorize the board of directors of the bank to levy and collect assessments on the common capital stock in such amount as the board of directors may determine necessary for such purpose, the board of directors shall levy the assessments so authorized and shall notify all common stockholders of record of the assessments by either registered or certified mail. If any common stockholder fails to pay his or her assessment within three weeks from the date of mailing such notice, the pro rata amount of such assessment shall be a lien upon his or her common capital stock and the board of directors shall immediately sell such shares of common capital stock at public or private sale without further notice and apply the proceeds of the sale to the payment of such assessment. Any balance shall be paid to the delinquent shareholder. Nothing in

this section shall be construed to authorize the levy and collections of assessments on the preferred capital stock of the bank.

Source: Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,103; Laws 1963, c. 29, § 117, p. 182; Laws 2017, LB140, § 113.

8-1,118 Insolvent banks; restoration of solvency; reopening for limited business; conditions; costs; new deposits treated as a trust fund; expenses.

If the director, with a view to restoring the solvency of any bank which the department has taken possession of pursuant to law, approves a contract or plan whereby the bank is permitted to receive deposits and pay checks and do a limited banking business, entered into between the unsecured depositors and unsecured creditors representing eighty-five percent or more of the total amount of deposits and unsecured claims of such bank on the one hand and the bank or its board of directors on the other, all other depositors and unsecured creditors shall be held subject to such agreement to the same extent and with the same effect as if they had joined in the execution of the agreement, and their claims shall be treated in all other respects as if they had joined in the execution of such agreement in the event such bank is permitted to reopen for business as limited by such contract. All deposits received after the adoption of such plan and the assets of the bank created thereby, and before the restoration of the bank to solvency, shall be a trust fund for the security and the repayment of the deposits so received and shall not be subject to the payment of any deposit, debt, claim, or demand of the bank previously created. Such money and assets shall be kept and invested in the manner directed by the director. Section 8-138 does not apply to banks operating under this section. Any county, city, village, township, or school district through its governing body, and the state through the Governor, may enter into such contract except when the funds of such county, city, village, township, or school district are adequately secured. Whenever a bank is permitted to operate under the provisions of this section, such bank shall pay all costs incurred by the department in the approval of such plan, including examiners' expenses, attorneys' fees, and clerk hire, and incurred in special examinations required by the director.

Source: Laws 1933, c. 16, § 1, p. 128; C.S.Supp.,1941, § 8-1,121; R.S. 1943, § 8-1,110; Laws 1963, c. 29, § 118, p. 183; Laws 2003, LB 217, § 8; Laws 2017, LB140, § 114.

8-1,119 Violations; general penalty.

Where no other punishment is provided in the Nebraska Banking Act, any person violating any provision of the act is guilty of a Class III misdemeanor.

Source: Laws 1909, c. 10, § 61, p. 95; R.S.1913, § 341; Laws 1919, c. 190, tit. V, art. XVI, § 61, p. 710; C.S.1922, § 8041; C.S.1929, § 8-1,104; R.S.1943, § 8-1,107; Laws 1963, c. 29, § 119, p. 184; Laws 1977, LB 40, § 53; Laws 1987, LB 2, § 19; Laws 1998, LB 1321, § 25; Laws 2017, LB140, § 115.

8-1,120 Repealed. Laws 2017, LB140, § 163.

8-1,121 Repealed. Laws 2017, LB140, § 163.**8-1,124 Emergencies; terms, defined.**

As used in sections 8-1,124 to 8-1,129, unless the context otherwise requires:

(1) Emergency means any condition or occurrence, actual or threatened, which interferes physically with the conduct of normal business operations at one or more or all of the offices of a financial institution, or which poses an imminent or existing threat to the safety or security of persons or property, or both, including, but not limited to, fire, flood, earthquake, hurricane, wind, rain, snow storm, labor dispute and strike, power failure, transportation failure, interruption of a communication facility, shortage of fuel, housing, food, transportation, or labor, robbery or attempted robbery, actual or threatened enemy attack, epidemic or other catastrophe, riot, civil commotion, and any other act of lawlessness or violence, actual or threatened;

(2) Financial institution means a bank, savings bank, building and loan association, savings and loan association, credit union, or trust company, or any office thereof, chartered by the department;

(3) Office means any place at which a financial institution transacts its business or conducts operations related to its business; and

(4) Officers means the person or persons designated by the board of directors, supervisory committee, or other governing body of a financial institution, to act for such financial institution in an emergency or, in the absence of any such designation or of such officer or officers, the president or any other officer in charge of such financial institution or of such office or offices.

Source: Laws 1971, LB 523, § 1; Laws 2017, LB140, § 116.

8-1,125 Emergencies; proclamation; director; effect; temporary office.

(1) Whenever the director is of the opinion that an emergency exists, or is impending, he or she may, by proclamation, authorize any financial institution located in the affected area to close any or all of its offices. In addition, if the director is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular financial institution, or a particular office of such financial institution, but not banks located in the area generally, he or she may authorize the particular financial institution or office of the financial institution affected to close. Any office so closed shall remain closed until the director proclaims that the emergency has ended or until such time as the officers of the financial institution determine that one or more offices closed because of the emergency should reopen, whichever occurs first, and, in either event, for such further time thereafter as may reasonably be required to reopen.

(2)(a) Whenever the director authorizes a financial institution to close pursuant to subsection (1) of this section or to remain closed pursuant to section 8-1,126, he or she, in writing, may further authorize the financial institution to open a temporary office at a designated location for the period of time during which the financial institution or office is to remain closed, subject to extensions requested by the financial institution and authorized by the director, except that in no event may the director authorize a temporary office to operate for a total period of longer than thirty months.

(b) The director may authorize a financial institution to open a temporary office after consideration of (i) the ability of the financial institution to conduct

its business in the area where the financial institution or the office of the financial institution was closed without opening a temporary office and (ii) the proximity of the financial institution or office of the financial institution to the proposed temporary office.

(c) The director may authorize a mobile branch to operate as a temporary office for any closed office of a financial institution other than its main office.

(d) The director may orally authorize a financial institution to open a temporary office to operate for a period no longer than four business days.

Source: Laws 1971, LB 523, § 2; Laws 2017, LB140, § 117.

8-1,126 Emergencies; officers; powers.

Whenever the officers of a financial institution are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a financial institution's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the director has not issued and does not issue a proclamation of emergency. Any such closed office may remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen. In no case shall such office remain closed for more than forty-eight consecutive hours, excluding other legal holidays, without requesting the approval of the director pursuant to section 8-1,125.

Source: Laws 1971, LB 523, § 3; Laws 2017, LB140, § 118.

8-1,127 Emergency; proclamation; President of United States; Governor; effect.

The officers of a financial institution may close any one or all of the financial institution's offices on any day, designated by proclamation of the President of the United States or the Governor, as a day or days of mourning, rejoicing, or other special observance.

Source: Laws 1971, LB 523, § 4; Laws 2017, LB140, § 119.

8-1,128 Emergency; closing; notice; contents.

A financial institution closing an office pursuant to the authority granted under section 8-1,126 shall give as prompt notice of its action as conditions will permit and by any means available, to the director.

Source: Laws 1971, LB 523, § 5; Laws 2017, LB140, § 120.

8-1,129 Emergencies; laws applicable.

(1) Any day on which a financial institution, or any one or more of its offices, is closed during all or any part of its normal business hours pursuant to the authorization granted under sections 8-1,124 to 8-1,129 shall be, with respect to such financial institution or, if not all of its offices are closed, with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any financial institution business of any character. No liability, or loss of rights of any kind, on the part of any financial institution, or director,

officer, or employee thereof, shall accrue or result by virtue of any closing authorized by sections 8-1,124 to 8-1,129.

(2) Sections 8-1,124 to 8-1,129 shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States authorizing the closing of a financial institution or excusing delay by a financial institution in the performance of its duties and obligations because of emergencies or conditions beyond its control or otherwise.

Source: Laws 1971, LB 523, § 6; Laws 2017, LB140, § 121.

Cross References

Bank holidays, see sections 62-301 and 62-301.01.

8-1,131 Retirement plan, medical savings account, or health savings account, investments; bank as trustee or custodian; powers and duties; account, how treated.

(1) All banks are qualified to act as trustee or custodian under the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the bank or in other banks. If any such retirement plan, within the judgment of the bank, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(2)(a) All banks are qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. If any such medical savings account or health savings account, within the judgment of the bank, constitutes a medical savings account under section 220 of the Internal Revenue Code or a health savings account under section 223 of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a medical savings account or health savings account, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the account holder. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(b) Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

Source: Laws 1975, LB 208, § 1; Laws 1995, LB 574, § 2; Laws 1997, LB 753, § 1; Laws 1999, LB 396, § 11; Laws 2005, LB 465, § 1; Laws 2017, LB140, § 122.

8-1,133 Bank; business of leasing personal property; subject to rules and regulations.

Any bank may engage, directly or indirectly, in the business of leasing personal property subject to rules and regulations as may be adopted and promulgated by the director.

Source: Laws 1977, LB 506, § 1; Laws 2017, LB140, § 123.

8-1,134 Violations; director; powers; fines; notice; hearing; closure; emergency powers; service; procedures.

(1) Whenever the director has reason to believe that a violation of any provision of Chapter 8 or of the Credit Union Act or any rule and regulation or order of the director has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule and regulation or order alleged to have been violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named in the order unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice. On the basis of the evidence produced at the hearing, the director shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 or the Credit Union Act and the rules and regulations and orders of the director. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County

as provided in section 8-1,135. As part of such order, the director may impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8, the Credit Union Act, or the rules and regulations or orders of the director. The fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8, the Credit Union Act, the rules and regulations of the director, or the same order of the director. The fines and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Financial Institution Assessment Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. If a person fails to pay the fine or costs of the investigation, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by an action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the financial institutions chartered by the department, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the department pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed with the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts stated in the certificate or affidavit, and a certified copy shall have the same force and effect as the original.

(5) Any hearing provided for in this section may be conducted by the director, or by any member of the department acting on behalf of the director, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the district court of Lancaster County shall have jurisdiction, upon application of

the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.

(6) The director may close to the public the hearing, or any portion of the hearing, provided for in this section when he or she finds that the closure is (a) necessary to protect any person against unwarranted injury or (b) in the public interest. The director shall close no more of the public hearing than is necessary to attain the objectives of this subsection.

Source: Laws 1984, LB 1039, § 1; Laws 1986, LB 908, § 1; Laws 1996, LB 948, § 118; Laws 1996, LB 1053, § 6; Laws 1997, LB 137, § 8; Laws 2017, LB140, § 124.

Cross References

Credit Union Act, see section 21-1701.

Financial Institution Assessment Cash Fund, purposes, see sections 8-601 and 8-604.

8-1,135 Appeal; procedure.

Any person aggrieved by a final order of the director made pursuant to section 8-1,134 may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 1039, § 2; Laws 1988, LB 352, § 10; Laws 2017, LB140, § 125.

Cross References

Administrative Procedure Act, see section 84-920.

8-1,136 Action to enjoin and enforce compliance.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Chapter 8 or the Credit Union Act, he or she may bring an action in the name of the director and the department in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the provisions of Chapter 8 or the Credit Union Act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond.

Source: Laws 1984, LB 1039, § 3; Laws 1986, LB 908, § 2; Laws 1996, LB 948, § 119; Laws 2017, LB140, § 126.

Cross References

Credit Union Act, see section 21-1701.

8-1,137 Evidence of violation; refer to prosecuting attorney.

The director may refer such evidence as may be available concerning violations of the Nebraska Criminal Code or of any rule and regulation or order

under Chapter 8 or under the Credit Union Act to the Attorney General or the proper county attorney. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted, if appropriate, without delay.

Source: Laws 1984, LB 1039, § 4; Laws 1986, LB 908, § 3; Laws 1996, LB 948, § 120; Laws 2017, LB140, § 127.

Cross References

Credit Union Act, see section 21-1701.
Nebraska Criminal Code, see section 28-101.

8-1,138 Violation of final order; liability; penalty.

(1) Any person who violates any of the provisions of a final order issued by the director shall be liable to any person or entity who suffers damage proximately caused by such violation.

(2) Any person who knowingly violates any final order issued by the director pursuant to section 8-1,134 is guilty of a Class I misdemeanor.

Source: Laws 1984, LB 1039, § 5; Laws 2017, LB140, § 128.

8-1,139 Misapplication of funds or assets; penalty.

An officer, director, agent, or employee of a bank, trust company, building and loan association, savings and loan association, credit union, or other similar entity which is chartered, licensed, regulated, or examined by the department who willfully misapplies any of the money, funds, or credits of any such entity or any money, funds, assets, or securities entrusted to the care or custody of such entity or the custody or care of any such officer, director, agent, or employee is guilty of a Class IV felony.

Source: Laws 1984, LB 1039, § 6; Laws 2003, LB 131, § 5; Laws 2017, LB140, § 129.

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, 2018, 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; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5; Laws 2014,

LB712, § 1; Laws 2015, LB286, § 1; Laws 2016, LB676, § 1; Laws 2017, LB140, § 130; Laws 2018, LB812, § 6.
Effective date April 12, 2018.

ARTICLE 2 TRUST COMPANIES

Section

- 8-204. Directors; qualifications; duties; vacancies.
- 8-206. Specific powers.
- 8-207. Appointment as fiduciary, authorized; oath.
- 8-213. Pledged securities of insolvent trust companies or out-of-state entity acting in fiduciary capacity; transfer to fiduciary; conditions.
- 8-234. Branch trust offices authorized; procedure.

8-204 Directors; qualifications; duties; vacancies.

The control of the business affairs of a trust company shall be vested in a board of directors of not less than five persons who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the trust company and in conformity with the Nebraska Trust Company Act. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy leaves a minimum of five directors, appointment shall be optional. The board shall select from among its number a president and secretary and shall appoint trust officers and committees as it deems necessary. The officers and committee members shall hold their positions at the discretion of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter and shall prepare and maintain complete and accurate minutes of the proceedings at such meetings.

The board of directors shall make or cause to be made each year a thorough examination of the books, records, funds, and securities held for the trust company and customer accounts. The examination may be conducted by the members of the board of directors or the board may accept an annual audit by an accountant or accounting firm approved by the Department of Banking and Finance. Any such examination or audit must comply in scope with minimum standards established by the department.

Unless the department otherwise approves, a majority of the members of the board of directors of any trust company shall be residents of this state. Reasonable efforts shall be made to acquire members of the board of directors from the county in which the trust company is located. Directors of trust companies shall be persons of good moral character and known integrity, business experience, and responsibility. No person shall act as such member of the board of directors of any trust company until the corporation applies for and obtains approval from the Department of Banking and Finance.

Source: Laws 1911, c. 31, § 4, p. 188; R.S.1913, § 741; Laws 1919, c. 190, tit. V, art. XVIII, § 4, p. 718; C.S.1922, § 8065; C.S.1929, § 8-203; R.S.1943, § 8-204; Laws 1993, LB 81, § 17; Laws 2013, LB213, § 6.

8-206 Specific powers.

A trust company created under the Nebraska Trust Company Act shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon and to purchase, hold, and lease fireproof and burglar-proof and other vaults and safes from which revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, act as assignee, receiver, trustee, and depositor, and accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order, judgment, or decree of any such court or by gift, grant, assignment, transfer, devise, or bequest any real or personal property in trust, to care for, manage, and convey the same in accordance with such trusts, and to execute and perform any and all such trusts;

(4) To act as attorney in fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, as personal representative, or as conservator or guardian of the estate of any incapacitated person;

(6) To act as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person;

(7) To act as agent or in an agency capacity for any person or entity, public or private;

(8) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for such corporation;

(9) To buy, hold, own, and sell securities issued or guaranteed by the United States Government or any authorized agency thereof, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, or securities secured by obligations of any of the foregoing, securities of any state or political subdivision thereof which possesses general powers of taxation, stock, warrants, bills of exchange, notes, mortgages, banker's acceptances, certificates of deposit in institutions whose accounts are insured by the Federal Deposit Insurance Corporation, securities issued pursuant to the Nebraska Business Development Corporation Act, and other investment securities, negotiable and nonnegotiable, except stock or other securities of any corporation organized under the Nebraska Trust Company Act;

(10) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the cost of such real estate and buildings not to exceed one hundred percent of the paid-up capital stock, except as otherwise approved in writing by the director, and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts;

(11) To borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. With the approval of the Director of Banking and Finance, any trust company may at any time, through action of its board of directors and without requiring any

action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of trustors and beneficiaries of estates and trusts and may be subordinated and subject to the claims of other creditors. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the trust company and shall not be held liable for assessments to restore impairments in the capital of the trust company as may be from time to time determined by the director; and

(12) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities granted in the Nebraska Trust Company Act, and all provisions of the act shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to accept deposits or conduct the business of banking as defined in the Nebraska Banking Act.

Source: Laws 1911, c. 31, § 6, p. 189; R.S.1913, § 743; Laws 1919, c. 190, tit. V, art. XVIII, § 6, p. 719; C.S.1922, § 8068; Laws 1927, c. 35, § 2, p. 160; C.S.1929, § 8-206; Laws 1933, c. 18, § 74, p. 172; C.S.Supp.,1941, § 8-206; R.S.1943, § 8-206; Laws 1959, c. 263, § 1, p. 919; Laws 1967, c. 22, § 1, p. 124; Laws 1986, LB 909, § 3; Laws 1986, LB 1177, § 1; Laws 1993, LB 81, § 20; Laws 1998, LB 1321, § 38; Laws 2005, LB 533, § 12; Laws 2017, LB140, § 131.

Cross References

Nebraska Banking Act, see section 8-101.02.

Nebraska Business Development Corporation Act, see section 21-2101.

8-207 Appointment as fiduciary, authorized; oath.

Courts of this state may appoint a trust company receiver, assignee, trustee, guardian, conservator, personal representative, custodian, or special administrator. When a trust company is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose, the president, vice president, secretary, or trust officer may, on behalf of the trust company, make and subscribe the required oath.

Source: Laws 1911, c. 31, § 7, p. 191; R.S.1913, § 744; Laws 1919, c. 190, tit. V, art. XVIII, § 7, p. 720; C.S.1922, § 8069; C.S.1929, § 8-207; R.S.1943, § 8-207; Laws 1947, c. 13, § 4, p. 78; Laws 1986, LB 909, § 4; Laws 1993, LB 81, § 21; Laws 2017, LB140, § 132.

8-213 Pledged securities of insolvent trust companies or out-of-state entity acting in fiduciary capacity; transfer to fiduciary; conditions.

In the case of national banks and federal savings associations doing business as trust companies, trust companies, federally chartered trust companies, out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, and out-of-state entities acting in a fiduciary capacity in this state, which upon insolvency are not liquidated by the Department of Banking and Finance, upon the appointment of a receiver, trustee in bankruptcy, or other liquidating agent, the department shall turn over to the receiver, trustee in bankruptcy, or other liquidating agent any

securities pledged to it by the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, upon:

(1) The entry of an order by a court having jurisdiction over a receiver, trustee in bankruptcy, or other liquidating agent of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, ordering the department to turn over to a receiver, trustee in bankruptcy, or other liquidating agent the securities pledged to the department; and

(2) The publication of a notice for three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, is located that all claims for the trust liabilities must be filed with the receiver, trustee in bankruptcy, or other liquidating agent within thirty days. In the case of national banks the notice provided for in 12 U.S.C. 193, and in the case of trust companies liquidated in bankruptcy court, the notice provided for in 11 U.S.C. 342, shall be sufficient without further notice being given and shall be in lieu of the notice required in this subdivision. In the case of out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or in the case of any out-of-state entity acting in a fiduciary capacity in this state, an additional notice shall be published in each county in Nebraska where the out-of-state trust company or out-of-state entity maintains an office, does business, or acts in a fiduciary capacity, or maintained an office, conducted business, or acted in a fiduciary capacity, within one year prior to the insolvency.

Source: Laws 1933, c. 20, § 1, p. 190; Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-213; Laws 1986, LB 960, § 2; Laws 1993, LB 81, § 27; Laws 1998, LB 1321, § 42; Laws 2005, LB 533, § 13; Laws 2012, LB963, § 7; Laws 2013, LB213, § 7.

Cross References

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

8-234 Branch trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a

substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch trust office would be located and (b) give notice of such application for a branch trust office to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director may determine. 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. If the director receives a substantive objection to the proposed branch trust office within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch trust office would be located. The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Source: Laws 1998, LB 1321, § 52; Laws 2002, LB 1089, § 5; Laws 2003, LB 217, § 10; Laws 2005, LB 533, § 14; Laws 2008, LB851, § 10; Laws 2010, LB890, § 7; Laws 2016, LB751, § 4.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section

- 8-318. Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.
- 8-345.01. Automatic teller machines; authorized.
- 8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.
- 8-374. Department; hearing on application; notice; purpose.

8-318 Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

(1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any person, regardless of age, in the same manner and with the same binding effect as though such person were of the age of majority, except that a minor or his or her estate shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on January 1, 2018, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the

federal Home Owners' Loan Act, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Source: Laws 1899, c. 17, § 7, p. 88; R.S.1913, § 492; Laws 1919, c. 190, tit. V, art. XIX, § 8, p. 726; C.S.1922, § 8090; C.S.1929, § 8-308; Laws 1939, c. 4, § 1, p. 62; C.S.Supp.,1941, § 8-308; R.S.1943, § 8-318; Laws 1953, c. 11, § 1, p. 76; Laws 1955, c. 11, § 1, p. 77; Laws 1971, LB 375, § 1; Laws 1975, LB 208, § 2; Laws 1986, LB 909, § 8; Laws 1995, LB 574, § 3; Laws 2005, LB 533, § 16; Laws 2016, LB760, § 3; Laws 2017, LB140, § 133; Laws 2018, LB812, § 7.

Effective date April 12, 2018.

8-345.01 Automatic teller machines; authorized.

Nothing in section 8-157.01 shall prohibit building and loan associations as defined in sections 8-301 to 8-340.01 from establishing and operating new automatic teller machines for the purpose of transmitting savings and loan transactions.

Source: Laws 1975, LB 508, § 2; Laws 1993, LB 81, § 53; Laws 2000, LB 932, § 14; Laws 2003, LB 131, § 6; Laws 2016, LB760, § 4.

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, 2018, 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; Laws 2012, LB963, § 11; Laws 2013, LB213, § 8; Laws 2014, LB712, § 2; Laws 2015, LB286, § 2; Laws 2016, LB676, § 2; Laws 2017, LB140, § 134; Laws 2018, LB812, § 8.
Effective date April 12, 2018.

8-374 Department; hearing on application; notice; purpose.

(1) Prior to issuing a certificate of approval, the department, upon receiving an application for a stock savings and loan association, shall (a) publish notice of filing of the application for a period of three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the savings and loan association and (b) give notice of such application for a stock savings and loan association to all financial institutions within the county where the proposed main office of the stock savings and loan would be located and to such other interested parties as the director may determine. 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.

(2) A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after filing the application and not less than thirty days after the last publication of notice. Such hearing shall be held to determine:

(a) Whether the articles of incorporation and bylaws conform to the requirements of sections 8-356 to 8-384 and contain a just and equitable plan for the management of the association's business;

(b) Whether the persons organizing such association are of good character and responsibility;

(c) Whether in the department's judgment a need exists for such an institution in the community to be served;

(d) Whether there is a reasonable probability of its usefulness and success; and

(e) Whether the same can be established without undue injury to properly conducted existing local savings and loan associations, whether mutual or capital stock in formation.

(3) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1981, LB 500, § 19; Laws 2008, LB851, § 12; Laws 2010, LB890, § 9; Laws 2016, LB751, § 5.

ARTICLE 6

ASSESSMENTS AND FEES

Section

8-601. Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.

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

8-603. Assessments, fees, and money collected by Director of Banking and Finance; use.

8-601 Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.

The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of the Credit Union Act, Delayed Deposit Services Licensing Act, Interstate Branching and Merger Act, Interstate Trust Company Office Act, Nebraska Bank Holding Company Act of 1995, Nebraska Banking Act, Nebraska Installment Loan Act, Nebraska Installment Sales Act, Nebraska Money Transmitters Act, Nebraska Trust Company Act, and Residential Mortgage Licensing Act; Chapter 8, articles 3, 5, 6, 7, 8, 13, 14, 15, 16, 19, 20, 24, and 25; and Chapter 45, articles 1 and 2. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations, savings banks, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment shall be a sum determined by the director in accordance with section 8-606 and approved by the Governor.

Source: Laws 1937, c. 20, § 1, p. 128; C.S.Supp., 1941, § 8-701; R.S. 1943, § 8-601; Laws 1955, c. 15, § 1, p. 83; Laws 1973, LB 164, § 20; Laws 1976, LB 561, § 2; Laws 1980, LB 966, § 2; Laws 1986, LB 910, § 1; Laws 2002, LB 1094, § 6; Laws 2003, LB 131, § 7; Laws 2007, LB124, § 8; Laws 2013, LB616, § 49; Laws 2017, LB140, § 135.

Cross References

Credit Union Act, see section 21-1701.

Delayed Deposit Services Licensing Act, see section 45-901.
Interstate Branching and Merger Act, see section 8-2101.
Interstate Trust Company Office Act, see section 8-2301.
Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Banking Act, see section 8-101.02.
Nebraska Installment Loan Act, see section 45-1001.
Nebraska Installment Sales Act, see section 45-334.
Nebraska Money Transmitters Act, see section 8-2701.
Nebraska Trust Company Act, see section 8-201.01.
Residential Mortgage Licensing Act, see section 45-701.

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 the handling of pledged securities as provided in sections 8-210 and 8-2727 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 entity pledging the securities;

(10) 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;

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

(12) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

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

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

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

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

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

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

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

(20) 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, LB124, § 9; Laws 2009, LB327, § 10; Laws 2010, LB891, § 3; Laws 2011, LB74, § 3; Laws 2012, LB963, § 12; Laws 2013, LB616, § 50; Laws 2017, LB140, § 136.

8-603 Assessments, fees, and money collected by Director of Banking and Finance; use.

The assessments referred to in sections 8-605 and 8-606, examination fees, investigation fees, filing fees, registration fees, licensing fees, and all other fees and money, except fines, collected by or paid to the Director of Banking and Finance under any of the laws specified in section 8-601, shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund. Fines collected by the director under such laws shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2007, LB124, § 10; Laws 2017, LB140, § 137.

ARTICLE 7

STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

Section

- 8-701. Banking institution; definition.
- 8-702. Banking institutions; maintain membership in Federal Deposit Insurance Corporation; automatic forfeiture of charter; prohibited acts; penalty.
- 8-705. Examinations, reports of other examiners; Director of Banking and Finance may accept.
- 8-706. Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.

(c) FEDERAL HOME LOAN BANK ACT

- 8-716. Federal Home Loan Bank members; tax exemption prohibited.

(a) FEDERAL BANKING ACT OF 1933

8-701 Banking institution; definition.

For purposes of sections 8-701 to 8-709, banking institution means any bank, stock savings bank, mutual savings bank, building and loan association, or savings and loan association, which is now or may hereafter be organized under the laws of this state.

Source: Laws 1935, c. 8, § 1, p. 72; C.S.Supp.,1941, § 8-401; R.S.1943, § 8-701; Laws 2003, LB 217, § 15; Laws 2005, LB 533, § 21; Laws 2017, LB140, § 138.

8-702 Banking institutions; maintain membership in Federal Deposit Insurance Corporation; automatic forfeiture of charter; prohibited acts; penalty.

(1) 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) The charter of any banking institution which fails to maintain membership in the Federal Deposit Insurance Corporation 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. 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, is guilty of a Class III felony.

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; Laws 2013, LB213, § 9; Laws 2017, LB140, § 139.

8-705 Examinations, reports of other examiners; Director of Banking and Finance may accept.

The Director of Banking and Finance is authorized to accept in his or her discretion, in lieu of any examination authorized by the laws of this state to be conducted by his or her department of a banking institution, the examination that may have been made of such banking institution within a reasonable period by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency if a copy of the examination is furnished to the director. The director may also in his or her discretion accept any report relative to the condition of a banking institution which may have been obtained by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency within a reasonable period in lieu of a report authorized by the laws of this state to be required of such institution by his or her department if a copy of such report is furnished to the director.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 5, p. 74; C.S.Supp.,1941, § 8-405; R.S.1943, § 8-705; Laws 1988, LB 375, § 4; Laws 2013, LB213, § 10.

8-706 Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.

The Director of Banking and Finance may furnish to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institution and of any or all reports made by it and shall give access and disclose to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, any and all information possessed by the office of the director with reference to the conditions or affairs of any such insured institution. Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured

under the provisions of section 8 of the Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended), or of any amendment of or substitution for the same, to comply with the provisions of such act, its amendments or substitutions, or the requirements of the Federal Deposit Insurance Corporation relative to examinations and reports, nor to limit the powers of the director with reference to examinations and reports under existing law.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 6, p. 74; C.S.Supp.,1941, § 8-406; R.S.1943, § 8-706; Laws 1988, LB 375, § 5; Laws 2013, LB213, § 11.

(c) FEDERAL HOME LOAN BANK ACT

8-716 Federal Home Loan Bank members; tax exemption prohibited.

No institution incorporated under the laws of this state which is or becomes a member of a Federal Home Loan Bank shall be exempt from any taxes of this state, including any contributions required to be paid under sections 48-648 to 48-654.

Source: Laws 1937, c. 51, § 3, p. 214; C.S.Supp.,1941, § 8-603; R.S.1943, § 8-716; Laws 1991, LB 77, § 3; Laws 2017, LB172, § 1.

ARTICLE 8

PERSONAL LOANS BY BANKS AND TRUST COMPANIES

Section

- 8-815. Terms, defined.
- 8-816. Repealed. Laws 2017, LB140, § 163.
- 8-819. Repealed. Laws 2017, LB140, § 163.
- 8-820. Personal loans; credit cards; interest; service fee; fee in lieu of interest.
- 8-822. Personal loans; method of computation; prepayment; rebates; delinquency charges.
- 8-826. Personal loans; duties of department.
- 8-827. Repealed. Laws 2017, LB140, § 163.
- 8-828. Personal loans; bank; purchasing and discounting commercial, negotiable, or installment paper.

8-815 Terms, defined.

As used in sections 8-815 to 8-829, unless the context otherwise requires:

- (1) Department means the Department of Banking and Finance;
- (2) Bank means the banks and trust companies organized under the laws of this state, and national banking associations doing business in this state and shall include national banking associations;
- (3) Personal loan means a loan, and the contract evidencing the same, which is repayable, pursuant to a contract or understanding, in two or more equal or unequal installments, and within one hundred forty-five months, but shall not include any loan on which the interest does not exceed sixteen percent per annum. Personal loan includes loans for the purchase of mobile homes even

though the loan is not repayable within one hundred forty-five months. Personal loan includes loans or advances initiated by credit card or other type of transaction card, including, but not limited to, those loan transactions initiated through electronic impulse; and

(4) Transaction card means a device or means used to access a prearranged revolving credit plan account.

Source: Laws 1965, c. 31, § 1, p. 213; Laws 1973, LB 141, § 1; Laws 1974, LB 721, § 4; Laws 1980, LB 276, § 3; Laws 1981, LB 214, § 3; Laws 1987, LB 332, § 1; Laws 2002, LB 1094, § 8; Laws 2003, LB 217, § 16; Laws 2017, LB140, § 140.

8-816 Repealed. Laws 2017, LB140, § 163.

8-819 Repealed. Laws 2017, LB140, § 163.

8-820 Personal loans; credit cards; interest; service fee; fee in lieu of interest.

Subject to the provisions of sections 8-815 to 8-829, any bank may contract for and receive, on any personal loan, charges at a rate not exceeding nineteen percent simple interest per year. In the case of loans initiated by credit card or other type of transaction card, the rate may be any amount agreed to by the parties. Any bank acquired pursuant to sections 8-1512 and 8-1513 may also charge commercially reasonable fees for service and use of a credit card or other type of transaction card on a per transaction and monthly or annual basis. For purposes of this section, section 85 of the National Bank Act, 12 U.S.C. 85, and section 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. 1831d, all interest, charges, fees, and other amounts permitted under sections 8-815 to 8-829 for loans initiated by credit card or other type of transaction card shall be deemed to be, and may be charged and collected as, interest by the bank, and all other terms and conditions of the agreement between the bank and the borrower that are not prohibited by such sections shall be deemed material to the determination of interest. Notwithstanding the provisions of this section, in the case of loans not initiated by credit card or other type of transaction card, a bank may charge a minimum fee of up to seven dollars and fifty cents in lieu of interest on personal loans and reasonable loan service costs as defined in subdivision (2) of section 45-101.02. Such loan service costs shall not be construed as interest.

Source: Laws 1965, c. 31, § 6, p. 214; Laws 1973, LB 164, § 23; Laws 1980, LB 276, § 4; Laws 1981, LB 150, § 1; Laws 1983, LB 454, § 1; Laws 1984, LB 1076, § 1; Laws 1988, LB 913, § 1; Laws 1993, LB 423, § 4; Laws 2017, LB140, § 141.

8-822 Personal loans; method of computation; prepayment; rebates; delinquency charges.

(1) Charges under section 8-820 shall be computed by application of the rate charged to the outstanding principal balance for the number of days actually elapsed without adding any additional charges, except that at the time the loan is made charges may be computed as a percentage per month of unpaid principal balances for the number of days elapsed on the assumption that the unpaid principal balance will be reduced, as provided in the loan contract, and such charges may be included in the scheduled installments. In the case of loans initiated by credit card or other type of transaction card, charges may be

computed in any other manner agreed to by the parties and may include compounding of fees and charges.

(2) If a loan 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 shall be 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 annual percentage rate previously stated to the borrower pursuant to the federal Consumer Credit Protection Act. The licensee may round the annual percentage rate 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.

(3) The charges retained by the bank may be increased to the extent that delinquency charges are computed on earned charges in accordance with the next succeeding sentence. Delinquency charges on any scheduled installment or portion thereof, if contracted for, may be taken, or in lieu thereof, interest after maturity on each such installment not exceeding the highest permissible interest rate.

Source: Laws 1965, c. 31, § 8, p. 215; Laws 1973, LB 164, § 24; Laws 1974, LB 626, § 2; Laws 1980, LB 279, § 2; Laws 1981, LB 214, § 4; Laws 1997, LB 137, § 10; Laws 2000, LB 1125, § 2; Laws 2017, LB140, § 142.

8-826 Personal loans; duties of department.

(1) The department shall:

(a) Be responsible for obtaining proper administration of sections 8-815 to 8-829 and take or cause to be taken such lawful steps as may be necessary and appropriate for the enforcement thereof; and

(b) Arrange for investigation and examination of the papers and records, pertaining to loans made under section 8-820, for the purpose of discovering violations of sections 8-815 to 8-829 or securing information lawfully required under it.

(2) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out and obtain compliance with sections 8-815 to 8-829.

Source: Laws 1965, c. 31, § 12, p. 218; Laws 1978, LB 641, § 3; Laws 2017, LB140, § 143.

8-827 Repealed. Laws 2017, LB140, § 163.

8-828 Personal loans; bank; purchasing and discounting commercial, negotiable, or installment paper.

Nothing contained in sections 8-815 to 8-826 shall be construed as preventing a bank from purchasing or discounting from established business concerns any

commercial, negotiable or installment paper, or as preventing any such bank from accepting from, or requiring such persons selling or offering to discount such instruments to execute, contracts guaranteeing the ultimate collection of all of such items so sold or discounted or requiring such persons to assume the burden of making collections of the individual items so sold as agent of the bank.

Source: Laws 1965, c. 31, § 14, p. 218; Laws 2017, LB140, § 144.

ARTICLE 9

BANK HOLDING COMPANIES

Section

8-915. Examinations; costs; reports in lieu of examination; director; powers.

8-915 Examinations; costs; reports in lieu of examination; director; powers.

The director may make examinations of any bank holding company with one or more state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in sections 8-605 and 8-606, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 26; Laws 2007, LB124, § 15; Laws 2013, LB213, § 12.

ARTICLE 10

NEBRASKA SALE OF CHECKS AND FUNDS TRANSMISSION ACT

Section

8-1001. Repealed. Laws 2013, LB 616, § 53.
 8-1001.01. Repealed. Laws 2013, LB 616, § 53.
 8-1002. Repealed. Laws 2013, LB 616, § 53.
 8-1003. Repealed. Laws 2013, LB 616, § 53.
 8-1004. Repealed. Laws 2013, LB 616, § 53.
 8-1005. Repealed. Laws 2013, LB 616, § 53.
 8-1006. Repealed. Laws 2013, LB 616, § 53.
 8-1007. Repealed. Laws 2013, LB 616, § 53.
 8-1008. Repealed. Laws 2013, LB 616, § 53.
 8-1009. Repealed. Laws 2013, LB 616, § 53.
 8-1010. Repealed. Laws 2013, LB 616, § 53.
 8-1011. Repealed. Laws 2013, LB 616, § 53.
 8-1012. Repealed. Laws 2013, LB 616, § 53.
 8-1012.01. Repealed. Laws 2013, LB 616, § 53.
 8-1013. Repealed. Laws 2013, LB 616, § 53.
 8-1014. Repealed. Laws 2013, LB 616, § 53.

- Section
 8-1016. Repealed. Laws 2013, LB 616, § 53.
 8-1017. Repealed. Laws 2013, LB 616, § 53.
 8-1018. Repealed. Laws 2013, LB 616, § 53.
 8-1019. Repealed. Laws 2013, LB 616, § 53.

- 8-1001 Repealed. Laws 2013, LB 616, § 53.**
8-1001.01 Repealed. Laws 2013, LB 616, § 53.
8-1002 Repealed. Laws 2013, LB 616, § 53.
8-1003 Repealed. Laws 2013, LB 616, § 53.
8-1004 Repealed. Laws 2013, LB 616, § 53.
8-1005 Repealed. Laws 2013, LB 616, § 53.
8-1006 Repealed. Laws 2013, LB 616, § 53.
8-1007 Repealed. Laws 2013, LB 616, § 53.
8-1008 Repealed. Laws 2013, LB 616, § 53.
8-1009 Repealed. Laws 2013, LB 616, § 53.
8-1010 Repealed. Laws 2013, LB 616, § 53.
8-1011 Repealed. Laws 2013, LB 616, § 53.
8-1012 Repealed. Laws 2013, LB 616, § 53.
8-1012.01 Repealed. Laws 2013, LB 616, § 53.
8-1013 Repealed. Laws 2013, LB 616, § 53.
8-1014 Repealed. Laws 2013, LB 616, § 53.
8-1016 Repealed. Laws 2013, LB 616, § 53.
8-1017 Repealed. Laws 2013, LB 616, § 53.
8-1018 Repealed. Laws 2013, LB 616, § 53.
8-1019 Repealed. Laws 2013, LB 616, § 53.

ARTICLE 11
SECURITIES ACT OF NEBRASKA

- Section
 8-1101. Terms, defined.
 8-1101.01. Federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933, defined.
 8-1102. Fraudulent and other prohibited practices.
 8-1103. Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.
 8-1104. Registration of securities; exceptions.

Section

- 8-1105. Repealed. Laws 2013, LB 214, § 13.
- 8-1106. Registration by coordination.
- 8-1107. Registration by qualification.
- 8-1108. Registration of securities; requirements; fees; effective date; reports; director, powers.
- 8-1108.01. Securities; sale without registration; cease and desist order; fine; lien; hearing.
- 8-1108.02. Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.
- 8-1109. Registration of securities; denial, suspension, or revocation; grounds.
- 8-1109.01. Registration of securities; denial, suspension, or revocation; additional grounds.
- 8-1109.02. Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.
- 8-1110. Securities exempt from registration.
- 8-1111. Transactions exempt from registration.
- 8-1114. Unlawful representation concerning merits of registration or exemption.
- 8-1115. Investigations; subpoena; director; powers.
- 8-1116. Violations; injunction; receiver; appointment; additional court orders authorized.
- 8-1117. Violations; penalty.
- 8-1118. Violations; damages; statute of limitations.
- 8-1120. Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.
- 8-1122.01. Federal limits rejected.
- 8-1123. Act, how cited.

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)(a), (b), (c), (d), (e), or (f) 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, credit unions, 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, (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, or (e) a person who is a resident of Canada and who has no office or other physical presence in Nebraska if the following conditions are satisfied: (i) The person must be registered with, or be a member of, a securities self-regulatory organization in Canada or a stock exchange in Canada; (ii) the person must maintain, in good standing, its provisional or territorial registration or membership in a securities self-regulatory organization in Canada, or stock exchange in Canada; (iii) the person effects, or attempts to effect, (A) a transaction with or for a Canadian client who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the client entered this state or (B) a transaction with or for a Canadian client in a self-directed tax advantaged retirement plan in Canada of which that client is the holder or contributor; and (iv) the person complies with all provisions of the Securities Act of Nebraska relating to the disclosure of material information in connection with the transaction;

(3) Department means the Department of Banking and Finance. 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 under the act;

(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, newsletter, 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, credit unions, 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 and 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 acts as they existed on January 1, 2017;

(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. For the limited purposes of determining professional malpractice insurance premiums, a security issued through a transaction that is exempted pursuant to subdivision (23) of section 8-1111 shall not be considered a security;

(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; Laws 2013, LB214, § 1; Laws 2017, LB148, § 1.

Cross References

Viatical Settlements Act, see section 44-1101.

8-1101.01 Federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933, defined.

For purposes of the Securities Act of Nebraska, federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933 means such rules and regulations as they existed on January 1, 2017, except that references to Rule 147 and Rule 147A adopted under the Securities Act of 1933 shall be to such rules as published in the Federal Register on November 21, 2016.

Source: Laws 2017, LB148, § 2.

8-1102 Fraudulent and other prohibited practices.

(1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud any person;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account, act as a broker for a person other than the client, or knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction. This subdivision shall not apply to any transaction involving a broker-dealer's client if the broker-dealer is not acting as an investment adviser in the transaction;

(d) To engage in dishonest or unethical practices as the director may define by rule and regulation or order; or

(e) In the solicitation of advisory clients, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(3) Except as may be permitted by rule and regulation or order of the director, it shall be unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract:

(a) Which provides for the compensation of the investment adviser or investment adviser representative on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of any client;

(b) Unless the investment advisory contract prohibits in writing the assignment of the contract by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(c) Unless the investment advisory contract provides in writing that if the investment adviser is a partnership or a limited liability company, the other party to the contract shall be notified of any change in the membership of the partnership or limited liability company within a reasonable time after the change.

(4) Subdivision (3)(a) of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (3)(b) of this section, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, except that if the investment adviser is a partnership or a limited liability company, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(5) It shall be unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of any client if:

(a) The director by rule and regulation or order prohibits the taking or custody; or

(b) In the absence of any rule and regulation or order by the director, the investment adviser or investment adviser representative fails to notify the director that he or she has or may have custody.

(6) The director may by rule and regulation or order adopt and promulgate exemptions from subdivisions (2)(c), (3)(a), (3)(b), and (3)(c) of this section when the exemptions are consistent with the public interest and are within the purposes fairly intended by the Securities Act of Nebraska.

Source: Laws 1965, c. 549, § 2, p. 1766; Laws 1990, LB 938, § 1; Laws 1993, LB 216, § 2; Laws 1994, LB 884, § 11; Laws 2017, LB148, § 3.

8-1103 Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.

(1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and payment of the fee prescribed in subsection (6) of this section prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director

whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

- (a) The applicant's form and place of organization;
- (b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

- (e) The applicant's financial condition and history; and

(f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

- (b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the department. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety or signature bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum net capital requirement, the director may by rule and regulation or order

require a broker-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, agent, investment adviser, and investment adviser representative shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration date such information as the director by rule and regulation or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative previously filed with the director by the applicant, and payment of the prescribed fee. A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule and regulation or order may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars

for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7)(a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director may prescribe by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so required shall be preserved for such period as the director may prescribe by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company

member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska;

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a

final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit; or

(xiii) Has refused to allow or otherwise impedes the department from conducting an examination under subsection (7) of this section or has refused the department access to a registrant's office to conduct an examination under subsection (7) of this section.

(b) The director may by order bar any person from engaging in the securities business in this state if the director finds that the order is in the public interest and that the person has:

(i) Willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act; or

(ii) Engaged in dishonest or unethical practices in the securities business, which activity at the time was subject to regulation by the Securities Act of Nebraska.

(c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of this section, the director may, by rule and regulation or order, determine that a violation of any provision of the fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission, in effect on January 1, 2017, constitutes a dishonest or unethical practice in the securities or commodities business.

(ii) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(iii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after 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, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(10)(a) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a

committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(b) If an applicant for registration does not complete the registration application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the registration application as abandoned and may issue a notice of abandonment of the registration application to the applicant in lieu of proceedings to deny the application.

(c) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Source: Laws 1965, c. 549, § 3, p. 1768; Laws 1973, LB 167, § 2; Laws 1977, LB 263, § 2; Laws 1989, LB 60, § 2; Laws 1990, LB 956, § 7; Laws 1991, LB 305, § 3; Laws 1993, LB 216, § 3; Laws 1993, LB 121, § 97; Laws 1994, LB 884, § 12; Laws 1997, LB 335, § 2; Laws 1997, LB 752, § 60; Laws 2000, LB 932, § 19; Laws 2001, LB 53, § 20; Laws 2003, LB 217, § 23; Laws 2017, LB148, § 4.

8-1104 Registration of securities; exceptions.

It shall be unlawful for any person to offer or sell any security in this state unless (1) such security is registered by coordination under section 8-1106 or by qualification under section 8-1107, (2) the security is exempt under section 8-1110 or is sold in a transaction exempt under section 8-1111, or (3) the security is a federal covered security.

Source: Laws 1965, c. 549, § 4, p. 1773; Laws 1997, LB 335, § 3; Laws 2013, LB214, § 2.

8-1105 Repealed. Laws 2013, LB 214, § 13.

8-1106 Registration by coordination.

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) One copy of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule and regulation or order requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by facsimile transmission or electronic mail of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or electronic mail and promptly confirms by letter sent postage prepaid when he or she notifies by telephone or electronic mail of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry.

(5) The director may by rule and regulation or order waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement

shall automatically become effective as soon as all the conditions have been satisfied.

Source: Laws 1965, c. 549, § 6, p. 1776; Laws 1967, c. 29, § 1, p. 142; Laws 1977, LB 263, § 3; Laws 1988, LB 795, § 3; Laws 1993, LB 216, § 4; Laws 2015, LB252, § 1; Laws 2016, LB771, § 1; Laws 2017, LB148, § 5.

8-1107 Registration by qualification.

(1) Any security may be registered by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) With respect to the issuer and any significant subsidiary, its name, address, and form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, his or her name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him or her as of a specified date within ninety days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer together with all predecessors, parents and subsidiaries;

(c) With respect to any person not named in subdivision (e) of this subsection, owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) of this subsection other than his or her occupation;

(d) With respect to every promoter, not named in subdivision (b) of this subsection, if the issuer was organized within the past three years, the information specified in subdivision (b) of this subsection, any amount paid to him or her by the issuer within that period or intended to be paid to him or her, and the consideration for any such payment;

(e) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(f) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses,

and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering, the name and address of every underwriter and every recipient of a finders' fee, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivision (b), (c), (d), (e) or (g) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(i) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any such litigation or proceeding known to be contemplated by governmental authorities;

(j) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalent as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(k) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(l) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(m) If a report or valuation, other than an official record that is public, is used in connection with the registration statement, a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified the report or valuation;

(n) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and

(o) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(3) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(4) A registration statement under this section shall become effective when the director so orders. The director shall require as a condition of registration under this section that a prospectus containing substantially the information specified in subdivisions (a) to (m) of subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to him or her otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, the confirmation of any sale made by or for the account of any such person, payment pursuant to any such sale, or delivery of the security pursuant to any such sale, whichever first occurs, but the director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or rules and regulations under such act.

Source: Laws 1965, c. 549, § 7, p. 1778; Laws 2017, LB148, § 6.

8-1108 Registration of securities; requirements; fees; effective date; reports; director, powers.

(1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under the Securities Act of Nebraska within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule and regulation or order permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification (a) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) that the applicant comply with the Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) that any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall

not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For the registration of securities by coordination or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than one hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain one hundred dollars of the fee. Any issuer who sells securities in this state in excess of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by coordination or qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which are being offered and sold directly by or for the account of the issuer.

(6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

Source: Laws 1965, c. 549, § 8, p. 1781; Laws 1988, LB 1157, § 1; Laws 1991, LB 305, § 4; Laws 1997, LB 335, § 4; Laws 2013, LB214, § 3; Laws 2017, LB148, § 7.

8-1108.01 Securities; sale without registration; cease and desist order; fine; lien; hearing.

(1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule and regulation or order under the act, except that the director shall not impose a fine upon any person in connection with a transaction made pursuant to subdivision (23) of section 8-1111 for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead. The fine and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by an action by the director and remitted to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within thirty business days after receipt of the request, unless both parties consent to a later date or the director or a hearing officer sets a later date for good cause. 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, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Source: Laws 1974, LB 721, § 5; Laws 1987, LB 650, § 1; Laws 1990, LB 956, § 8; Laws 1993, LB 216, § 5; Laws 1997, LB 335, § 5; Laws 2001, LB 53, § 21; Laws 2013, LB205, § 1; Laws 2017, LB148, § 8.

8-1108.02 Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the

Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2)(a) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) of the Securities Act of 1933 together with a filing fee of two hundred dollars.

(b) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(4) of the Securities Act of 1933 together with a filing fee of two hundred dollars. In addition, for federal covered securities under section 18(b)(4)(E) of the Securities Act of 1933, the director may also require the submission of a consent to service of process signed by the issuer and may require that such filing be made no later than fifteen days after the first sale of such federal covered security in this state.

(c) In connection with filings made pursuant to subdivisions (a) and (b) of this subsection, the director, by rule and regulation or order, may require the filing of all documents which are part of any amendment which the issuer is required to file with the Securities and Exchange Commission.

(3) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(4) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(5) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(6) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registration, except that this subsection shall not apply to the offer or sale of a federal covered security under section 18(b)(4)(E) of the Securities Act of 1933 if no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer.

Source: Laws 1997, LB 335, § 9; Laws 2013, LB214, § 4; Laws 2015, LB252, § 2; Laws 2016, LB771, § 2.

8-1109 Registration of securities; denial, suspension, or revocation; grounds.

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule and regulation or order, or condition under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(5) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(8) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(9) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

Source: Laws 1965, c. 549, § 9, p. 1783; Laws 1967, c. 29, § 2, p. 144; Laws 1973, LB 167, § 4; Laws 1977, LB 263, § 4; Laws 1987, LB 27, § 1; Laws 1993, LB 121, § 98; Laws 1994, LB 884, § 13; Laws 2013, LB214, § 5; Laws 2017, LB148, § 9.

8-1109.01 Registration of securities; denial, suspension, or revocation; additional grounds.

The director may issue an order denying effectiveness to, or suspend or revoke the effectiveness of, a registration statement to register securities by qualification if he or she finds that the conditions in subdivision (1) of section 8-1109, or if he or she finds that any of the following conditions exist:

- (1) Such order is in the public interest;
- (2) The issuer's plan of business, or the plan of financing is either unfair, unjust, inequitable, dishonest, oppressive, or fraudulent or would tend to work a fraud upon the purchaser;
- (3) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;
- (4) The securities offered or to be offered, or issued or to be issued, in payment for property, patents, formulas, goodwill, promotion, or intangible assets, are in excess of the reasonable value thereof, or the offering has been, or would be, made with unreasonable amounts of options;
- (5) The offering has been or would be made with unreasonable amounts of underwriters' or sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. However, in an application to register the securities for a holding company which is organized for one of its purposes to acquire or start an insurance company, the total commissions, organization and promotion expenses shall not exceed ten percent of the money paid upon stock subscriptions;
- (6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;
- (7) The enterprise or business of the issuer, promoter, or guarantor is unlawful;
- (8) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director;
- (9) There has been a violation of the Securities Act of Nebraska, any rule and regulation under the act, or an order of the director of which such issuer or registrant has notice;
- (10) There has been a failure to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the director the true situation or condition of such issuer;
- (11) The applicant or registrant has failed to pay the proper registration, filing, or investigation fee;
- (12) Any registration statement registering securities by qualification, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or
- (13) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering.

Source: Laws 1967, c. 29, § 3, p. 145; Laws 2002, LB 857, § 1; Laws 2017, LB148, § 10.

8-1109.02 Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.

Upon the entry of an order denying effectiveness to or suspending or revoking the effectiveness of a registration statement to register securities under any part of section 8-1109 or 8-1109.01, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that any person to whom the order is directed may request a hearing within fifteen business days after the issuance of the order. Upon receipt of a written request the matter will be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the director or a hearing officer sets a later date for good cause. 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 the issuer and to the applicant or registrant, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Source: Laws 1967, c. 29, § 4, p. 146; Laws 1990, LB 956, § 9; Laws 2001, LB 53, § 22; Laws 2017, LB148, § 11.

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 federal covered security specified in section 18(b)(1) of the Securities Act of 1933 or by rule adopted under that provision;

(b) Any security listed or approved for listing on another securities market specified by rule and regulation or order under the Securities Act of Nebraska;

(c) Any put or a call option contract, a warrant, or a subscription right on or with respect to securities described in subdivisions (a) or (b) of this subdivision;

(d) Any option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;

(e) Any offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(f) Any option or a derivative security designated by the Securities and Exchange Commission under section 9(b) of the Securities Exchange Act of 1934;

(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; Laws 2017, LB148, § 12.

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, Analysis, 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 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.

The director may by order deny or revoke the exemption specified in subdivision (a) or (b) of 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 such order has been entered and the reasons for such order and that within fifteen business days after receipt of a written request the matter will be set 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 modified or vacated by the director. If a hearing is requested or ordered, the director shall, after notice of and opportunity for hearing to all interested persons, enter his or her written findings of fact and conclusions of

law and may affirm, modify, or vacate the order. No such order shall operate retroactively. No person may be considered to have violated 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;

(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 and regulation or order 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 federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as such act existed on January 1, 2017;

(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)(a) Any offer or sale to any of the following, whether the purchaser is acting for itself or in some fiduciary capacity:

(i) A bank, savings institution, credit union, trust company, or other financial institution;

(ii) An insurance company;

(iii) An investment company as defined in the Investment Company Act of 1940;

(iv) A pension or profit-sharing trust;

(v) A broker-dealer;

(vi) A corporation with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(vii) A Massachusetts or similar business trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(viii) A partnership with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(ix) A trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities, whose purchase is directed by a person who has such knowledge and experience in financial and business

matters that he or she is capable of evaluating the merits and risks of the prospective investment;

(x) Any entity in which all of the equity owners are individuals who are individual accredited investors as defined in subdivision (b) of this subdivision;

(xi) An institutional buyer as may be defined by the director by rule and regulation or order; or

(xii) An individual accredited investor.

(b) For purposes of subdivision (8)(a) of this section, individual accredited investor means (i) 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, (ii) any manager of a limited liability company that is the issuer of the securities being offered or sold, (iii) 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, excluding the value of the primary residence of such person, or (iv) 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 exer-

cisable 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 a cooperative formed as a corporation under section 21-1301 or 21-1401 or a limited cooperative association formed under the Nebraska Limited Cooperative Association Act 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 of 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) Any security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established

by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, 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. This subdivision shall apply to offers and sales to the following individuals:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations;

(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 of 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;

(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 and regulation or order 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 and regulation or order 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 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;

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed seven hundred fifty thousand dollars or such greater amount as from time to time may be set in accordance with rules and regulations adopted and promulgated by the director to adjust the amount to reflect changes in the Consumer Price Index for All Urban Consumers as prepared by the United States Department of Labor, Bureau of Labor Statistics, and at least eighty percent of the proceeds are used in Nebraska;

(b) 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;

(c) The issuer, any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited

to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

(B) The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(e) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) the name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and (iii) the financial condition of the issuer;

(f) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

(i) Has received the written disclosure statement;

(ii) Understands the investment involves a high level of risk; and

(iii) Has the financial resources to withstand the total loss of the money invested; and

(g) The issuer, within thirty days after the completion of the offering, files with the department a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds; or

(24)(a) An offer or a sale of a security made after August 30, 2015, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(i) The issuer of the security is a business entity organized under the laws of Nebraska and authorized to do business in Nebraska;

(ii) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933, or complies with Rule 147A adopted under the Securities Act of 1933;

(iii) Except as provided in subdivision (c) of this subdivision, the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor, does not exceed the following amount:

(A) If the issuer has not undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of

its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision; or

(B) If the issuer has undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision;

(iv) The issuer does not accept more than five thousand dollars from any single purchaser except that such limitation shall not apply to an accredited investor;

(v) Unless waived by written consent by the director, not less than ten days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(A) Make a notice filing with the department on a form prescribed by the director;

(B) Pay a filing fee of two hundred dollars. However, no filing fee is required to file amendments to the form;

(C) Provide the director a copy of the disclosure document to be provided to prospective investors under subdivision (a)(xi) of this subdivision;

(D) Provide the director a copy of an escrow agreement with a bank, regulated trust company, savings bank, savings and loan association, or credit union authorized to do business in Nebraska in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person;

(E) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement; and

(F) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement;

(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, an entity that would be an investment company but for the exclusions provided in section 3(c) of the Investment Company Act of 1940, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;

(vii) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR

STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

(viii) The issuer requires each purchaser to certify in writing or electronically as follows:

I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission, department, or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.;

(ix) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Nebraska and, if applicable, is an individual accredited investor;

(x) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in subdivision (a)(v)(D) of this subdivision. The director may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection;

(xi) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the offer of securities is made to the prospective investor that contains all the following:

(A) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(B) The identity of all persons owning more than twenty percent of the ownership interests of any class of securities of the company;

(C) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;

(D) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;

(E) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any portal operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(F) For each person identified as required in subdivision (a)(xi)(E) of this subdivision, a description of the consideration being paid to the person for such assistance;

(G) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management;

(H) The names and addresses of each portal operator that will be offering or selling the issuer's securities under an exemption under this subdivision;

(I) The Uniform Resource Locator for each funding portal that will be used by the portal operator to offer or sell the issuer's securities under an exemption under this subdivision; and

(J) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering;

(xii) The offering or sale exempted under this subdivision is made exclusively through one or more funding portals and each funding portal is subject to the following:

(A) Before any offer or sale of securities, the issuer must provide to the portal operator evidence that the issuer is organized under the laws of Nebraska and is authorized to do business in Nebraska;

(B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision, the portal operator must register with the department by filing a statement, accompanied by a two-hundred-dollar filing fee, that includes the following information:

(I) Documentation which demonstrates that the portal operator is a business entity and authorized to do business in Nebraska;

(II) A representation that the funding portal is being used to offer and sell securities pursuant to the exemption under this subdivision; and

(III) The identity and location of, and contact information for, the portal operator;

(C) The portal operator is not required to register as a broker-dealer if all of the following apply with respect to the funding portal and its portal operator:

(I) It does not offer investment advice or recommendations;

(II) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the funding portal;

(III) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the funding portal;

(IV) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(V) The fee it charges an issuer for an offering of securities on the funding portal is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the funding portal, or a combination of the fixed and variable amounts;

(VI) It does not identify, promote, or otherwise refer to any individual security offered on the funding portal in any advertising for the funding portal;

(VII) It does not engage in any other activities that the director, by rule and regulation or order, determines are prohibited of the funding portal; and

(VIII) Neither the portal operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the portal operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(1) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(2) The portal operator establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants;

(D) If any change occurs that affects the funding portal's registration exemption, the portal operator must notify the department within thirty days after the change occurs;

(E) A registered broker-dealer who also serves as a portal operator must register with the department as a portal operator pursuant to subdivision (a)(xii)(B) of this subdivision, except that the fee for registration shall be waived;

(F) The issuer and the portal operator must maintain records of all offers and sales of securities effected through the funding portal and must provide ready access to the records to the department, upon request. The records of a portal operator under this subdivision are subject to the reasonable periodic, special, or other audits or inspections by a representative of the director, in or outside Nebraska, as the director considers necessary or appropriate in the public

interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection under this subdivision;

(G) The portal operator shall limit web site access to the offer or sale of securities to only Nebraska residents;

(H) The portal operator shall not hold, manage, possess, or handle investor funds or securities; and

(I) The portal operator may not be an investor in any Nebraska offering under this subdivision.

(b) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a funding portal if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this subdivision with the department and, if the quarterly report is made available on a funding portal, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) An offer or a sale under this subdivision to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in subdivision (a)(iii) of this subdivision.

(d) The exemption under this subdivision may not be used in conjunction with any other exemption under the Securities Act of Nebraska, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve-month period.

(e) The exemption under this subdivision does not apply if an issuer or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(ii) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) For purposes of this subdivision:

(i) Accredited investor means a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer, an individual accredited investor, or a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(ii) Funding portal means an Internet web site that is operated by a portal operator for the offer and sale of securities pursuant to this subdivision;

(iii) 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, excluding the value of the primary residence of such person, 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; and

(iv) Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the department as required by this subdivision.

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; Laws 2013, LB205, § 2; Laws 2013, LB214, § 6; Laws 2015, LB226, § 1; Laws 2017, LB148, § 13.

Cross References

Nebraska Limited Cooperative Association Act, see section 21-2901.

8-1114 Unlawful representation concerning merits of registration or exemption.

Neither the fact that an application for registration or notice filing under section 8-1103, a notice filing under section 8-1108.02, or a registration statement under section 8-1106 or 8-1107 has been filed, nor the fact that a person or security is effectively registered, shall constitute a finding by the

director that any document filed under the Securities Act of Nebraska is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction shall mean that the director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It shall be unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Source: Laws 1965, c. 549, § 14, p. 1790; Laws 1997, LB 335, § 8; Laws 2013, LB214, § 7.

8-1115 Investigations; subpoena; director; powers.

(1) The director in his or her discretion (a) may make such public or private investigations within or without this state as he or she deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate the Securities Act of Nebraska or any rule and regulation or order under the act or to aid in the enforcement of the act or in the adopting and promulgating of rules and regulations and the prescribing of forms under the act, (b) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (c) may publish information concerning any violation of the act or any rule and regulation or order under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the applicant or person who is the subject of the investigation.

(2) For the purpose of any investigation or proceeding under the act, the director or any person designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(3) At the request of an administrator responsible for enforcement of the securities laws of another state, the director may issue subpoenas to compel the attendance of any person or require the production of records in this state if the alleged violation being investigated would be a violation of the Securities Act of Nebraska if the activities had occurred in this state.

(4) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to such person an order requiring him or her to appear before the director, or the officer designated by the director, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

Source: Laws 1965, c. 549, § 15, p. 1791; Laws 1987, LB 497, § 1; Laws 2017, LB148, § 14.

8-1116 Violations; injunction; receiver; appointment; additional court orders authorized.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act,

the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the Securities Act of Nebraska or any rule and regulation or order under the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. Upon a proper showing by the director, the court may invoke its equitable powers under the law and issue an order of rescission, restitution, or disgorgement, an order freezing assets, an order requiring an accounting, or a writ of attachment or writ of general or specific execution, directed to any person who has engaged in or is engaging in any act constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act. The director shall not be required to post a bond.

Source: Laws 1965, c. 549, § 16, p. 1792; Laws 1998, LB 894, § 3; Laws 2009, LB113, § 3; Laws 2017, LB148, § 15.

8-1117 Violations; penalty.

(1) Any person who willfully violates any provision of the Securities Act of Nebraska except section 8-1113, or who willfully violates any rule and regulation or order under the act, or who willfully violates the provisions of section 8-1113 knowing the statement made to be false or misleading in any material respect is guilty of a Class IV felony. No indictment may be returned or information filed under the act more than five years after the alleged violation.

(2) The director may refer such evidence as may be available concerning violations of the act or any rule and regulation or order under the act to the Attorney General or the proper county attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under the act.

(3) Nothing in the act shall limit the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Source: Laws 1965, c. 549, § 17, p. 1792; Laws 1977, LB 40, § 65; Laws 1998, LB 894, § 4; Laws 2017, LB148, § 16.

8-1118 Violations; damages; statute of limitations.

(1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security, except that in actions brought based on a transaction exempt from registration under subdivision (23) of section 8-1111, no person shall be liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not

misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof in such cases being on the claimant. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or employee of such person who materially aids in the conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before an action is commenced and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before an action is commenced and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule and regulation or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any action on the contract. Any condition, stipulation, or provision binding any person acquiring any security

or receiving any investment advice to waive compliance with any provision of the act or any rule and regulation or order under the act shall be void.

Source: Laws 1965, c. 549, § 18, p. 1793; Laws 1973, LB 167, § 8; Laws 1993, LB 216, § 9; Laws 1993, LB 121, § 99; Laws 1994, LB 884, § 14; Laws 2013, LB205, § 3; Laws 2017, LB148, § 17.

8-1120 Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such deputies, examiners, assistants, or counsel as may be reasonably necessary for the purpose thereof. The employment of any person for the administration of the act is subject to section 49-1499.07. The director may delegate to a deputy director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act.

(2) A security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(3)(a) It shall be unlawful for the director or any of his or her employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. Neither the director nor any of his or her employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (3)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the United

States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(4) The director may adopt and promulgate rules and regulations and prescribe forms to carry out the act. No rule and regulation may be adopted and promulgated or form may be prescribed unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act. In adopting and promulgating rules and regulations and prescribing forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the director shall be published and made available to any person upon request.

(5) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule and regulation, form, or order of the director, notwithstanding that the rule and regulation or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(6) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(7) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act 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.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) The director may, by rule and regulation or order, authorize or require the filing of any document required to be filed under the act by electronic or other means, processes, or systems.

(10) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(11) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Source: Laws 1965, c. 549, § 20, p. 1795; Laws 1969, c. 584, § 33, p. 2361; Laws 1973, LB 167, § 9; Laws 1983, LB 469, § 1; Laws 1995, LB 7, § 27; Laws 1997, LB 864, § 1; Laws 2000, LB 932, § 21; Laws 2003, LB 217, § 24; Laws 2013, LB199, § 17; Laws 2013, LB214, § 8; Laws 2017, LB148, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

8-1122.01 Federal limits rejected.

The federal limits on the registration of securities, dealers, brokers, broker-dealers, agents, and investment advisers as provided in the federal Philanthropy Protection Act of 1995, Public Law 104-62, shall not apply in Nebraska and are hereby rejected by the State of Nebraska pursuant to section 6(c) of such act. The State of Nebraska elects to retain the authority to require or not require such registration under the Securities Act of Nebraska and to retain the authority to have such registration requirements apply in all administrative and judicial actions commenced after July 15, 1998.

Source: Laws 1998, LB 1180, § 1; Laws 2017, LB148, § 19.

8-1123 Act, how cited.

Sections 8-1101 to 8-1123 shall be known and may be cited as the Securities Act of Nebraska.

Source: Laws 1965, c. 549, § 23, p. 1797; Laws 1997, LB 335, § 11; Laws 1998, LB 1180, § 2; Laws 2002, LB 957, § 11; Laws 2009, LB113, § 4; Laws 2017, LB148, § 20.

ARTICLE 14

DISCLOSURE OF CONFIDENTIAL INFORMATION

Section

- 8-1401. Disclosure of confidential records or information; court order; not applicable, when; immunity.
- 8-1402. Provide records or information; costs.
- 8-1403. Terms, defined.
- 8-1404. Death of decedent; information regarding financial or property interests; furnished; to whom; affidavit; contents; immunity from liability; applicability of section.

8-1401 Disclosure of confidential records or information; court order; not applicable, when; immunity.

(1) No person organized under the Credit Union Act, the Nebraska Banking Act, the Nebraska Industrial Development Corporation Act, the Nebraska Model Business Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization, unless:

(a) The disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court;

(b) The disclosure is governed by rules for discovery promulgated pursuant to section 25-1273.01;

(c) The disclosure is made pursuant to section 8-1404;

(d) The request for disclosure is made by a law enforcement agency regarding a crime, a fraud, or any other unlawful activity in which the person to whom the request for disclosure is made is or may be a victim of such crime, fraud, or unlawful activity;

(e) The request for disclosure is made by a governmental agency which is a duly constituted supervisory regulatory agency of the person to whom the request for disclosure is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;

(f) The request for disclosure is made pursuant to subpoena issued under the laws of this state by a governmental agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction;

(g) The production of records is pursuant to a written demand of the Tax Commissioner under section 77-375;

(h) There is first presented to such person a subpoena, summons, or warrant issued by a court of competent jurisdiction;

(i) A statute by its terms or rules and regulations adopted and promulgated thereunder requires the disclosure, other than by subpoena, summons, warrant, or court order;

(j) There is presented to such person an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order;

(k) The request for disclosure relates to information or records regarding the balance due, monthly payments due, payoff amounts, payment history, interest rates, due dates, or similar information for indebtedness owed by a deceased person when the request is made by a person having an ownership interest in real estate or personal property which secures such indebtedness owed to the person to whom the request for disclosure is made; or

(l) There is first presented to such person the written permission of the person about whom records or information is being sought authorizing the release of the requested records or information.

(2) Any person who makes a disclosure of records or information as required by this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

(3) This section does not prohibit:

(a) The disclosure of records or information to a certified public accountant while engaged to perform an independent audit;

(b) The disclosure of records or information or the making of reports pursuant to a statute which, by its terms or rules and regulations adopted and promulgated thereunder, permits the disclosure or reports; or

(c) The disclosure, in the regular course of business, of records or information for the purpose of conducting due diligence pursuant to a proposed

purchase or sale of a person subject to the provisions of this section or of the assets or liabilities of such a person.

Source: Laws 1977, LB 384, § 1; Laws 1979, LB 216, § 1; Laws 1986, LB 529, § 1; Laws 1995, LB 109, § 193; Laws 1996, LB 681, § 178; Laws 1996, LB 948, § 121; Laws 1998, LB 1104, § 1; Laws 2002, LB 857, § 2; Laws 2002, LB 957, § 12; Laws 2003, LB 131, § 10; Laws 2003, LB 156, § 1; Laws 2012, LB811, § 1; Laws 2014, LB749, § 233; Laws 2014, LB788, § 3; Laws 2017, LB140, § 145.

Cross References

Credit Union Act, see section 21-1701.

Nebraska Banking Act, see section 8-101.02.

Nebraska Industrial Development Corporation Act, see section 21-2318.

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

Nebraska Professional Corporation Act, see section 21-2201.

Nebraska Trust Company Act, see section 8-201.01.

8-1402 Provide records or information; costs.

(1) Any person, party, agency, or organization requesting disclosure of records or information pursuant to section 8-1401 shall pay the costs of providing such records or information unless:

(a) The request for disclosure is made pursuant to subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court rule provides for the method of payment;

(b) The request for disclosure is made pursuant to subdivision (1)(d) or (1)(e) of section 8-1401;

(c) Otherwise ordered by a court of competent jurisdiction; or

(d) The person making the disclosure waives any or all of the costs.

(2)(a) The requesting person, party, agency, or organization shall pay the actual cost of providing the records or information.

(b) For purposes of this subsection, actual cost means:

(i) Search and processing costs, including the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging, and preparing records or information for shipment or delivery. Search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies;

(ii) Reproduction costs incurred in making copies of records or information requested. The rate for reproduction costs for making copies of requested records or information shall be the usual rate charged by the person making the disclosure to its customers for reproducing copies, including copies produced by reader-printer reproduction processes. Photographs, films, and other materials shall be reimbursed at actual cost; and

(iii) Transportation costs, including transport of personnel to locate and retrieve the records or information requested and including all other reasonably necessary costs to convey the records or information.

(3) No person authorized to receive payment pursuant to subsection (1) of this section has an obligation to provide any records or information pursuant to section 8-1401 until assurances are received that the costs due under this

section will be paid, except for requests made pursuant to subdivisions (1)(d), (1)(e), (1)(f), and (1)(g) of section 8-1401.

Source: Laws 1979, LB 216, § 2; Laws 1995, LB 384, § 11; Laws 1998, LB 1104, § 2; Laws 2002, LB 957, § 13; Laws 2003, LB 156, § 2; Laws 2014, LB788, § 4; Laws 2015, LB155, § 4.

8-1403 Terms, defined.

For purposes of sections 8-1401, 8-1402, and 8-1404:

(1) Governmental agency means any agency, department, or commission of this state or any authorized officer, employee, or agent of such agency, department, or commission;

(2) Law enforcement agency means an agency or department of this state or of any political subdivision of this state that obtains, serves, and enforces arrest warrants or that conducts or engages in prosecutions for violations of the law; and

(3) Person means any individual, corporation, partnership, limited liability company, association, joint stock association, trust, unincorporated organization, and any other legal entity.

Source: Laws 2003, LB 156, § 3; Laws 2014, LB788, § 6.

8-1404 Death of decedent; information regarding financial or property interests; furnished; to whom; affidavit; contents; immunity from liability; applicability of section.

(1) This section does not apply to:

(a) Real property owned by a decedent; or

(b) The contents of a safe deposit box rented by a decedent from a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union.

(2) After the death of a decedent, a person (a) indebted to the decedent or (b) having possession of (i) personal property, (ii) an instrument evidencing a debt, (iii) an obligation, (iv) a chose in action, (v) a life insurance policy, (vi) a bank account, (vii) a certificate of deposit, or (viii) intangible property, including annuities, fixed income investments, mutual funds, cash, money market accounts, or stocks, belonging to the decedent, shall furnish the value of the indebtedness or property on the date of death and the names of the known or designated beneficiaries of property described in this subsection to a person who is (A) an heir at law of the decedent, (B) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (C) an agent or attorney authorized in writing by any such person described in subdivision (A) or (B) of this subdivision, with a copy of such authorization attached to the affidavit, and who also presents an affidavit containing the information required by subsection (3) of this section.

(3) An affidavit presented under subsection (2) of this section shall state:

(a) The name, address, social security number if available, and date of death of the decedent;

(b) The name and address of the affiant and that the affiant is (i) an heir at law of the decedent, (ii) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (iii) an agent or attorney

authorized in writing by any such person described in subdivision (i) or (ii) of this subdivision;

(c) That the disclosure of the value on the date of death is necessary to determine whether the decedent's estate can be administered under the summary procedures set forth in section 30-24,125, to assist in the determination of the inheritance tax in an estate that is not subject to probate, or to assist a conservator or guardian in the preparation of a final accounting subsequent to the death of the decedent;

(d) That the affiant is answerable and accountable for the information received to the decedent's personal representative, if any, or to any other person having a superior right to the property or indebtedness;

(e) That the affiant swears or affirms that all statements in the affidavit are true and material and further acknowledges that any false statement may subject the person to penalties relating to perjury under section 28-915; and

(f) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) A person presented with an affidavit under subsection (2) of this section shall provide the requested information within five business days after being presented with the affidavit.

(5) A person who acts in good faith reliance on an affidavit presented under subsection (2) of this section is immune from liability for the disclosure of the requested information.

Source: Laws 2014, LB788, § 5.

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 but payment shall not be a condition precedent to approval by the director.

Source: Laws 1983, LB 241, § 5; Laws 1990, LB 956, § 16; Laws 2003, LB 217, § 27; Laws 2008, LB851, § 14; Laws 2011, LB74, § 4; Laws 2016, LB751, § 6.

ARTICLE 21

INTERSTATE BRANCHING AND MERGER ACT

Section

8-2104. Out-of-state bank; powers; interstate merger transaction; notice; powers and duties.

8-2104 Out-of-state bank; powers; interstate merger transaction; notice; powers and duties.

(1) An out-of-state bank may establish and maintain a branch or acquire a branch in this state upon compliance with any applicable requirements of the Nebraska Model Business Corporation Act for registration or qualification to do business in this state.

(2) An out-of-state bank may engage in an interstate merger transaction in this state in which it is the resulting bank and establish one or more branches in this state. The out-of-state bank shall notify the department of the proposed interstate merger transaction involving a Nebraska state chartered bank within fifteen days after the date it files an application for an interstate merger transaction with its primary regulator.

(3) An out-of-state bank may conduct only those activities at its branch or branches in this state that are permissible under the laws of Nebraska or of the

United States, except that an out-of-state bank with trust powers may exercise all trust powers in this state as a Nebraska bank with trust powers subject to the requirements of section 8-209.

(4) All branches of an out-of-state bank shall comply with all applicable Nebraska laws and regulations in the conduct of their business in this state to the maximum extent authorized by federal law.

Source: Laws 1997, LB 351, § 4; Laws 2002, LB 1089, § 11; Laws 2012, LB963, § 17; Laws 2014, LB749, § 234.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 23

INTERSTATE TRUST COMPANY OFFICE ACT

Section

8-2306. Out-of-state trust company; instate branch trust offices; requirements; procedure.

8-2311. Out-of-state trust company without instate branch trust office; representative trust offices; requirements; procedure.

8-2306 Out-of-state trust company; instate branch trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain branch trust offices in Nebraska pursuant to section 8-2305, shall file written notice of the proposed transaction with the director on a form prescribed by the director on or after the date on which the out-of-state trust company applies to its home state regulator for approval to establish and maintain the branch trust office in this state. The notice shall include a copy of the application made to its home state regulator, a copy of a resolution of its board of directors authorizing the branch trust office, and the filing fee prescribed by section 8-602.

(2) An out-of-state trust company shall provide with the notice satisfactory evidence to the director of compliance with (a) any applicable requirements of the Nebraska Model Business Corporation Act and (b) the applicable requirements of its home state regulator for establishing and maintaining a branch trust office.

(3) An out-of-state trust company shall provide with the notice an affidavit from its president stating that for as long as it maintains a branch trust office in this state the trust company will comply with Nebraska law.

(4) An out-of-state trust company shall obtain a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described in section 8-205.01 shall satisfy the requirements of this subsection. The bond or a substitute bond shall remain in effect during all periods in which the trust company conducts business in Nebraska.

Source: Laws 1998, LB 1321, § 59; Laws 2014, LB749, § 235.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

8-2311 Out-of-state trust company without instate branch trust office; representative trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain representative trust offices in Nebraska pursuant to section 8-2310, shall file written notice of the proposed transaction with the director on a form prescribed by the director. The notice shall include, in addition to the information and fee prescribed in subsection (1) of section 8-2309:

(a) Satisfactory evidence that the out-of-state trust company is a trust company;

(b) Satisfactory evidence of compliance with any applicable requirements of the Nebraska Model Business Corporation Act;

(c) An affidavit from its president stating that for as long as it maintains a representative trust office in this state the trust company will comply with Nebraska law; and

(d) Submission of a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described in section 8-205.01 shall satisfy the requirements of this subdivision. The bond or a substitute bond shall remain in effect during all periods in which the trust company conducts business in Nebraska.

(2) The director shall act within ninety days after receipt of notice under subsection (1) of this section. The director may extend the ninety-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis. If the ninety-day period is extended, the out-of-state trust company may establish representative trust offices only on prior written approval of the director.

(3) The director may deny approval of the proposed representative trust office if he or she finds that the trust company lacks sufficient financial resources to establish the representative trust office without adversely affecting its safety or soundness, that the trust company does not have adequate fidelity bond coverage, or that the proposed representative trust office would not be in the public interest.

(4) If the director does not extend the ninety-day period pursuant to subsection (2) of this section and does not act within ninety days, the out-of-state trust company may, upon compliance with sections 8-209 and 8-210, establish representative trust offices on the ninety-first day following the director's receipt of notice.

Source: Laws 1998, LB 1321, § 64; Laws 2014, LB749, § 236.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

**ARTICLE 24
CREDIT CARD BANK**

Section
8-2401. Formation; conditions.

8-2401 Formation; conditions.

A credit card bank may be formed under the Nebraska Banking Act if all of the following conditions are met:

(1) A credit card bank shall not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties;

(2) A credit card bank may not accept any savings or time deposits of less than one hundred thousand dollars, except that savings or time deposits of any amount may be accepted from affiliated financial institutions;

(3) The services of a credit card bank shall be limited to the solicitation, processing, and making of loans instituted by credit card or transaction card and matters relating or incidental thereto;

(4) A credit card bank shall not make commercial loans;

(5) A credit card bank shall, on the date of commencement of banking business in this state, have a minimum capital stock and paid-in surplus of two million five hundred thousand dollars;

(6) A credit card bank shall (a) employ on the date of commencement of its banking business in this state or within one year after such date not less than fifty persons in this state in its business or (b) contract with a qualifying association as defined in subdivision (4) of section 8-1511 to provide for the processing of its credit card or transaction card operations;

(7) A credit card bank shall maintain only one office that accepts deposits;

(8) A credit card bank may maintain one or more processing centers in this state;

(9) A credit card bank shall operate in a manner and at a location that is not likely to attract customers from the general public in this state to the substantial detriment of existing financial institutions as defined in section 8-101.03 located in this state; and

(10) A credit card bank shall provide for the insurance of deposits as described in subsection (1) of section 8-702.

Source: Laws 2004, LB 999, § 17; Laws 2005, LB 533, § 24; Laws 2017, LB140, § 146.

Cross References

Nebraska Banking Act, see section 8-101.02.

ARTICLE 26

CREDIT REPORT PROTECTION ACT

Section	
8-2601.	Act, how cited.
8-2602.	Terms, defined.
8-2603.	Security freeze; request.
8-2603.01.	Protected consumer; security freeze; request; creation of record for protected consumer; placement of freeze.
8-2604.	Consumer reporting agency; release of credit report or other information prohibited without authorization.
8-2605.	Consumer reporting agency; placement of security freeze; when; written confirmation to consumer.
8-2606.	Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when.
8-2608.	Consumer reporting agency; mandatory removal of security freeze; conditions.
8-2608.01.	Protected consumer; security freeze; duration; consumer reporting agency; restrictions on release of information.

Section

- 8-2608.02. Protected consumer; removal of security freeze; request.
- 8-2608.03. Protected consumer; remove security freeze; delete record of protected consumer; when.
- 8-2609. Consumer reporting agency; power with respect to fees.
- 8-2609.01. Protected consumer; consumer reporting agency; power with respect to fees.
- 8-2610. Consumer reporting agency; changes to official information in file; written confirmation required; exceptions.
- 8-2611. Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated.
- 8-2612. Consumer reporting agency; information furnished to governmental agency.
- 8-2613. Act; use of credit report or information derived from file; applicability.
- 8-2614. Entities not considered consumer reporting agencies; not required to place security freeze on file.
- 8-2614.01. Protected consumer provisions; applicability.
- 8-2615. Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages.

8-2601 Act, how cited.

Sections 8-2601 to 8-2615 shall be known and may be cited as the Credit Report Protection Act.

Source: Laws 2007, LB674, § 1; Laws 2016, LB835, § 1.

Cross References

Consumer reporting agency, duty to furnish information to consumer, see section 20-149.

8-2602 Terms, defined.

For purposes of the Credit Report Protection Act:

(1) Consumer reporting agency means any person which, for monetary fees, for dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(2) Credit report has the same meaning as consumer report as defined in 15 U.S.C. 1681a(d);

(3) File, when used in connection with information on any consumer or protected consumer, means all of the information on that consumer or protected consumer recorded and retained by a consumer reporting agency regardless of how the information is stored. File does not include a record;

(4) Protected consumer means an individual who is (a) under sixteen years of age at the time a request for the placement of a security freeze is made or (b) an incapacitated person for whom a guardian or guardian ad litem has been appointed;

(5) Record means a compilation of information that (a) identifies a protected consumer, (b) is created by a consumer reporting agency solely for the purpose of complying with section 8-2603.01, and (c) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

(6) Representative means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer;

(7) Security freeze means:

(a) A notice placed in a consumer's file as provided in section 8-2603 that prohibits the consumer reporting agency from releasing a credit report, or any other information derived from the file, in connection with the extension of credit or the opening of a new account, without the express authorization of the consumer;

(b) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

(i) Is placed on the protected consumer's record in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in the Credit Report Protection Act; or

(c) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

(i) Is placed on the protected consumer's credit report in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report except as provided in section 8-2608.01;

(8) Substantially similar type of security product means any product that provides the same level of protection to a consumer's or protected consumer's credit report as that provided under the Credit Report Protection Act regardless of the contact method used by a consumer or protected consumer to request, temporarily lift, or remove a restriction placed on the consumer's or protected consumer's credit report;

(9) Sufficient proof of authority means documentation that shows a representative has authority to act on behalf of a protected consumer. Sufficient proof of authority includes, but is not limited to, an order issued by a court of law, a lawfully executed and valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer. A representative who is a parent may establish sufficient proof of authority by providing a certified or official copy of the protected consumer's birth certificate;

(10) Sufficient proof of identification means information or documentation that identifies a consumer, a protected consumer, or a representative of a protected consumer. Sufficient proof of identification includes, but is not limited to, a social security number or a copy of a social security card, a certified or official copy of a birth certificate, a copy of a valid driver's license, or any other government-issued identification; and

(11) Victim of identity theft means a consumer or protected consumer who has a copy of an official police report evidencing that the consumer or protected consumer has alleged to be a victim of identity theft.

Source: Laws 2007, LB674, § 2; Laws 2009, LB177, § 1; Laws 2016, LB835, § 2; Laws 2018, LB757, § 1.
Effective date July 19, 2018.

8-2603 Security freeze; request.

A consumer may elect to place a security freeze on his or her file by submitting a request at the address or other point of contact and in the manner specified by the consumer reporting agency.

Source: Laws 2007, LB674, § 3; Laws 2016, LB835, § 3.

8-2603.01 Protected consumer; security freeze; request; creation of record for protected consumer; placement of freeze.

(1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(a) The consumer reporting agency receives a request from the representative for the placement of the security freeze under this section; and

(b) The representative:

(i) Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency; and

(ii) Provides to the consumer reporting agency:

(A) Sufficient proof of identification of the protected consumer and the representative; and

(B) Sufficient proof of authority to act on behalf of the protected consumer.

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request described in subdivision (1)(a) of this section, the consumer reporting agency shall create a record for the protected consumer.

(3) Within thirty days after receiving a request that meets the requirements of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

Source: Laws 2016, LB835, § 4; Laws 2018, LB757, § 2.

Effective date July 19, 2018.

8-2604 Consumer reporting agency; release of credit report or other information prohibited without authorization.

If a security freeze is in place with respect to a consumer's or protected consumer's file, the consumer reporting agency shall not release a credit report or any other information derived from the file to a third party without the prior express authorization of the consumer, protected consumer, or representative. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a consumer's or protected consumer's file.

Source: Laws 2007, LB674, § 4; Laws 2016, LB835, § 5.

8-2605 Consumer reporting agency; placement of security freeze; when; written confirmation to consumer.

(1) A consumer reporting agency shall place a security freeze on a file no later than three business days after receiving a request under section 8-2603.

(2) Until July 1, 2008, a consumer reporting agency shall, within ten business days after receiving a request under section 8-2603, send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer

when providing authorization for the release of a credit report or any other information derived from his or her file for a specified period of time. Beginning July 1, 2008, a consumer reporting agency shall send such confirmation and provide such identification number or password to the consumer within five business days after receiving a request under section 8-2603.

(3) The written confirmation required under subsection (2) of this section shall include a warning which shall read as follows: WARNING TO PERSONS SEEKING A CREDIT FREEZE AS PERMITTED BY THE CREDIT REPORT PROTECTION ACT: YOU MAY BE DENIED CREDIT AS A RESULT OF A FREEZE PLACED ON YOUR CREDIT.

Source: Laws 2007, LB674, § 5; Laws 2016, LB835, § 6.

8-2606 Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when.

(1) When a consumer requests a security freeze under section 8-2603, the consumer reporting agency shall disclose the process of placing and temporarily lifting the security freeze, including the process for allowing access to his or her credit report or any other information derived from his or her file for a specified period of time by temporarily lifting the security freeze.

(2) If a consumer wishes to allow his or her credit report or any other information derived from his or her file to be accessed for a specified period of time by temporarily lifting the security freeze placed under section 8-2603, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Sufficient proof of identification of the consumer;

(b) The unique personal identification number or password provided by the consumer reporting agency under section 8-2605; and

(c) The proper information regarding the specified time period.

(3)(a) Until January 1, 2009, a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze placed under section 8-2603 on his or her file shall comply with the request no later than three business days after receiving the request.

(b) A consumer reporting agency shall develop procedures involving the use of a telephone, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a security freeze placed under section 8-2603 on his or her file in an expedited manner. By January 1, 2009, a consumer reporting agency shall comply with a request to temporarily lift a security freeze within fifteen minutes after receiving such request by telephone or through a secure electronic method.

(4) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (3) of this section if:

(a) The consumer fails to meet the requirements of subsection (2) of this section; or

(b) The consumer reporting agency's ability to temporarily lift the security freeze within the time provided in subsection (3) of this section is prevented by:

(i) An act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomena;

(ii) An unauthorized or illegal act by a third party, including terrorism, sabotage, riot, vandalism, labor strike or dispute disrupting operations, or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;

(iv) Governmental action, including an emergency order or regulation, judicial or law enforcement action, or similar directive;

(v) Regularly scheduled maintenance, during other than normal business hours, of the consumer reporting agency's system or updates to such system;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's system that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

For purposes of this subsection, normal business hours means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., in the applicable time zone in this state.

Source: Laws 2007, LB674, § 6; Laws 2016, LB835, § 7.

8-2608 Consumer reporting agency; mandatory removal of security freeze; conditions.

A consumer reporting agency shall remove a security freeze placed under section 8-2603 within three business days after receiving a request for removal from the consumer who provides both of the following:

(1) Sufficient proof of identity of the consumer; and

(2) The unique personal identification number or password referred to in subdivision (2)(b) of section 8-2606.

Source: Laws 2007, LB674, § 8; Laws 2016, LB835, § 8.

8-2608.01 Protected consumer; security freeze; duration; consumer reporting agency; restrictions on release of information.

A security freeze for a protected consumer shall remain in effect unless removed in accordance with section 8-2608.02 or 8-2608.03. A consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer.

Source: Laws 2016, LB835, § 9.

8-2608.02 Protected consumer; removal of security freeze; request.

If a protected consumer or the representative wishes to remove a security freeze placed under section 8-2603.01 for the protected consumer, the protected consumer or the representative shall:

(1) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency; and

(2) Provide to the consumer reporting agency:

(a) In the case of a request by the protected consumer:

(i) Proof that the sufficient proof of authority for the representative to act on behalf of the protected consumer is no longer valid; and

(ii) Sufficient proof of identification of the protected consumer; or

(b) In the case of a request by the representative:

(i) Sufficient proof of identification of the protected consumer and the representative; and

(ii) Sufficient proof of authority to act on behalf of the protected consumer.

Within thirty days after receiving a request that meets the requirements of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

Source: Laws 2016, LB835, § 10; Laws 2018, LB757, § 3.
Effective date July 19, 2018.

8-2608.03 Protected consumer; remove security freeze; delete record of protected consumer; when.

A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Source: Laws 2016, LB835, § 11.

8-2609 Consumer reporting agency; power with respect to fees.

(1) A consumer reporting agency shall not charge any fee for placing, temporarily lifting, or removing a security freeze placed under section 8-2603 or for placing, temporarily lifting, or removing any other substantially similar type of security product. This subsection does not apply if the substantially similar type of security product, alone or in combination with another product, provides greater protection to the consumer than a security freeze.

(2) A consumer reporting agency shall reissue the same or a new personal identification number or password required under section 8-2605 one time without charge and may charge a fee of no more than five dollars for subsequent reissuance of the personal identification number or password.

Source: Laws 2007, LB674, § 9; Laws 2009, LB177, § 3; Laws 2016, LB835, § 12; Laws 2018, LB757, § 4.
Effective date July 19, 2018.

8-2609.01 Protected consumer; consumer reporting agency; power with respect to fees.

A consumer reporting agency shall not charge any fee for placement or removal of a security freeze or for placement or removal of any other substantially similar type of security product for a protected consumer. This section does not apply if the substantially similar type of security product, alone or in combination with another product, provides greater protection to the protected consumer than a security freeze.

Source: Laws 2016, LB835, § 13; Laws 2018, LB757, § 5.
Effective date July 19, 2018.

8-2610 Consumer reporting agency; changes to official information in file; written confirmation required; exceptions.

If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a file without sending a written confirmation of the change to the consumer, protected consumer, or representative within thirty days after the change is made: Name, date of birth, social security number, and address. In the case of an address change, the written confirmation shall be sent to both the new address and the former address. Written confirmation is not required for technical modifications of a consumer's or protected consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

Source: Laws 2007, LB674, § 10; Laws 2016, LB835, § 14.

8-2611 Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated.

(1) A consumer reporting agency may not suggest or otherwise state or imply to a third party that a security freeze on a consumer's or protected consumer's file reflects a negative credit score, history, report, or rating.

(2) If a third party requests access to a credit report or any other information derived from a file in connection with an application for credit or the opening of an account and the consumer, protected consumer, or representative has placed a security freeze on his or her file and does not allow his or her file to be accessed during that specified period of time, the third party may treat the application as incomplete.

Source: Laws 2007, LB674, § 11; Laws 2016, LB835, § 15.

8-2612 Consumer reporting agency; information furnished to governmental agency.

The Credit Report Protection Act does not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's or protected consumer's name, address, former address, place of employment, or former place of employment.

Source: Laws 2007, LB674, § 12; Laws 2016, LB835, § 16.

8-2613 Act; use of credit report or information derived from file; applicability.

The Credit Report Protection Act does not apply to the use of a credit report or any information derived from the file by any of the following:

(1) A person or entity, a subsidiary, affiliate, or agent of that person or entity, an assignee of a financial obligation owing by the consumer or protected consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer or protected consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer or protected consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer or protected consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subdivision, reviewing the account includes activities related to account mainte-

nance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 8-2606 for purposes of facilitating the extension of credit or other permissible use;

(3) Any federal, state, or local governmental entity, including, but not limited to, a law enforcement agency, a court, or an agent or assignee of a law enforcement agency or court;

(4) A private collection agency acting under a court order, warrant, or subpoena;

(5) Any person or entity for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on September 1, 2007;

(6) Any person or entity administering a credit file monitoring subscription service to which the consumer or protected consumer has subscribed;

(7) Any person or entity for the purpose of providing a consumer, protected consumer, or representative with a copy of the consumer's or protected consumer's credit report or any other information derived from his or her file upon the consumer's, protected consumer's, or representative's request; and

(8) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

Source: Laws 2007, LB674, § 13; Laws 2016, LB835, § 17.

8-2614 Entities not considered consumer reporting agencies; not required to place security freeze on file.

The following entities are not consumer reporting agencies for purposes of the Credit Report Protection Act and are not required to place a security freeze under section 8-2603 or 8-2603.01:

(1) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer or protected consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer's, protected consumer's, or representative's request for a deposit account at the inquiring bank or financial institution; and

(3) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency, or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new credit reports are produced. A consumer reporting agency shall honor any security freeze placed on a file by another consumer reporting agency.

Source: Laws 2007, LB674, § 14; Laws 2016, LB835, § 18.

8-2614.01 Protected consumer provisions; applicability.

Sections 8-2603.01, 8-2608.01, 8-2608.02, 8-2608.03, and 8-2609.01 shall not apply to any person or entity that maintains a data base used solely for the following:

- (1) Criminal record information;
- (2) Personal loss history information;
- (3) Fraud prevention or detection;
- (4) Employment screening; or
- (5) Tenant screening.

Source: Laws 2016, LB835, § 19.

8-2615 Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages.

The Attorney General shall enforce the Credit Report Protection Act. For purposes of the act, the Attorney General may issue subpoenas, adopt and promulgate rules and regulations, and seek injunctive relief and a monetary award for civil penalties, attorney's fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General may also seek and recover actual damages for each consumer or protected consumer injured by a violation of the act.

Source: Laws 2007, LB674, § 15; Laws 2016, LB835, § 20.

ARTICLE 27

NEBRASKA MONEY TRANSMITTERS ACT

Section

- 8-2701. Act, how cited.
- 8-2702. Definitions, where found.
- 8-2703. Applicant, defined.
- 8-2704. Authorized delegate, defined.
- 8-2705. Breach of security of the system, defined.
- 8-2706. Control, defined.
- 8-2707. Controlling person, defined.
- 8-2708. Department, defined.
- 8-2709. Director, defined.
- 8-2710. Electronic instrument, defined.
- 8-2711. Executive officer, defined.
- 8-2712. Key shareholder, defined.
- 8-2713. Licensee, defined.
- 8-2714. Material litigation, defined.
- 8-2715. Monetary value, defined.
- 8-2716. Money transmission, defined.
- 8-2717. Nationwide Mortgage Licensing System and Registry, defined.
- 8-2718. Outstanding payment instrument, defined.
- 8-2719. Payment instrument, defined.
- 8-2720. Permissible investments, defined.
- 8-2721. Person, defined.
- 8-2722. Remit, defined.
- 8-2723. Stored value, defined.
- 8-2724. Licensure requirement; applicability.
- 8-2725. License required; license not transferable or assignable.
- 8-2726. License; applicant; qualifications; requirements.
- 8-2727. License applicant; surety bond; alternate security; duration.
- 8-2728. Licensee; investments required; waiver.
- 8-2729. License application; form; contents.

Section

- 8-2730. Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; duties; department; duties.
- 8-2731. Supervisory information sharing; information and material; how treated; applicability; director; powers.
- 8-2732. Application fee; processing fee.
- 8-2733. Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.
- 8-2734. License; renewal application; licensing fee; processing fee; report; contents.
- 8-2735. Licensee; notice to director; when; report; contents.
- 8-2736. Acquisition of control of licensee; notice to director; director; duties; powers; disapproval; grounds; notice; hearing.
- 8-2737. Onsite examination of licensee; notice; examination fee; costs; director; powers.
- 8-2738. Licensee; books, accounts, and records.
- 8-2739. Licensee; authorized delegate; contract; contents.
- 8-2740. Authorized delegate; duties.
- 8-2741. License; suspension or revocation; grounds; director; powers and duties; hearing; surrender; cancellation; expiration.
- 8-2742. Authorized delegate; suspension or revocation of designation; grounds; director; powers and duties; hearing; final order; application to modify or rescind.
- 8-2743. Cease and desist order; notice; hearing; vacation or modification of order; when; judicial review; enforcement.
- 8-2744. Violations; orders authorized.
- 8-2745. Violations; penalties.
- 8-2746. Rules and regulations.
- 8-2747. Fees, charges, costs, and fines; disposition.
- 8-2748. Repealed. Laws 2016, LB778, § 9.

8-2701 Act, how cited.

Sections 8-2701 to 8-2747 shall be known and may be cited as the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 1; Laws 2016, LB778, § 1.

8-2702 Definitions, where found.

For purposes of the Nebraska Money Transmitters Act, the definitions found in sections 8-2703 to 8-2723 shall be used.

Source: Laws 2013, LB616, § 2.

8-2703 Applicant, defined.

Applicant means a person filing an application for a license under the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 3.

8-2704 Authorized delegate, defined.

Authorized delegate means an entity designated by the licensee or an exempt entity under the Nebraska Money Transmitters Act to engage in the business of money transmission on behalf of the licensee or exempt entity.

Source: Laws 2013, LB616, § 4.

8-2705 Breach of security of the system, defined.

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.

Source: Laws 2013, LB616, § 5.

8-2706 Control, defined.

Control means the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise. Any person who (1) has the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or any person in control of a licensee, (2) directly or indirectly has the right to vote ten percent or more of a class of stock or directly or indirectly has the power to sell or direct the sale of ten percent or more of a class of stock, (3) in the case of a limited liability company, is a managing member, or (4) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that licensee.

Source: Laws 2013, LB616, § 6.

8-2707 Controlling person, defined.

Controlling person means any person in control of a licensee.

Source: Laws 2013, LB616, § 7.

8-2708 Department, defined.

Department means the Department of Banking and Finance.

Source: Laws 2013, LB616, § 8.

8-2709 Director, defined.

Director means the Director of Banking and Finance.

Source: Laws 2013, LB616, § 9.

8-2710 Electronic instrument, defined.

Electronic instrument means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded, and the value of which is decremented upon each use. Electronic instrument does not include a card or other tangible object that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 10.

8-2711 Executive officer, defined.

Executive officer means the president, chairperson of the executive committee, senior officer responsible for business decisions, chief financial officer, and any other person who performs similar functions for a licensee.

Source: Laws 2013, LB616, § 11.

8-2712 Key shareholder, defined.

Key shareholder means any person or group of persons acting in concert owning ten percent or more of any voting class of an applicant's stock.

Source: Laws 2013, LB616, § 12.

8-2713 Licensee, defined.

Licensee means a person licensed pursuant to the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 13.

8-2714 Material litigation, defined.

Material litigation means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in an applicant's or licensee's annual audited financial statements, report to shareholders, or similar documents.

Source: Laws 2013, LB616, § 14.

8-2715 Monetary value, defined.

Monetary value means a medium of exchange, whether or not redeemable in money.

Source: Laws 2013, LB616, § 15.

8-2716 Money transmission, defined.

Money transmission means the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, money transmission also includes bill payment services not limited to the right to receive payment of any claim for another but does not include bill payment services in which an agent of a payee receives money or monetary value on behalf of such payee.

Source: Laws 2013, LB616, § 16.

8-2717 Nationwide Mortgage Licensing System and Registry, defined.

Nationwide Mortgage Licensing System and Registry means a 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, installment loan companies, and other state-regulated financial services entities and industries.

Source: Laws 2013, LB616, § 17.

8-2718 Outstanding payment instrument, defined.

Outstanding payment instrument means any payment instrument issued by a licensee which has been sold in the United States directly by the licensee or any payment instrument issued by a licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the

licensee as having been sold, and which has not yet been paid by or for the licensee.

Source: Laws 2013, LB616, § 18.

8-2719 Payment instrument, defined.

Payment instrument means any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. Payment instrument does not include any credit card, any voucher, any letter of credit, or any instrument that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 19.

8-2720 Permissible investments, defined.

Permissible investments means:

- (1) Cash;
- (2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;
- (4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;
- (5) Investment securities that are obligations of the United States or its agencies or instrumentalities, obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state or political subdivision thereof;
- (6) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one of more permissible investments as set forth in this section;
- (7) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- (8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract described in section 8-2739 which are not past due or doubtful of collection; or
- (9) Any other investment or similar security approved by the director.

Source: Laws 2013, LB616, § 20.

8-2721 Person, defined.

Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation. Person does not include the United States or the State of Nebraska.

Source: Laws 2013, LB616, § 21.

8-2722 Remit, defined.

Remit, except as used in section 8-2747, means either to make direct payment of the funds to a licensee or its representatives authorized to receive those funds or to deposit the funds in a bank, credit union, or savings and loan association or other similar financial institution in an account specified by a licensee.

Source: Laws 2013, LB616, § 22.

8-2723 Stored value, defined.

Stored value means monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 23.

8-2724 Licensure requirement; applicability.

(1) The requirement for a license under the Nebraska Money Transmitters Act does not apply to:

- (a) The United States or any department, agency, or instrumentality thereof;
- (b) Any post office of the United States Postal Service;
- (c) A state or any political subdivision thereof;

(d)(i) Banks, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States;

(ii) Subsidiaries of the institutions listed in subdivision (d)(i) of this subsection;

(iii) Bank holding companies which have a banking subsidiary located in Nebraska and whose debt securities have an investment grade rating by a national rating agency; or

(iv) Authorized delegates of the institutions and entities listed in subdivision (d)(i), (ii), or (iii) of this subsection, except that authorized delegates that are not banks, credit unions, building and loan associations, savings and loan associations, savings banks, mutual banks, subsidiaries of any of the foregoing, or bank holding companies shall comply with all requirements imposed upon authorized delegates under the act;

(e) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency, as defined in Consumer Financial Protection Bureau Regulation E, 12 C.F.R. part 1005, as such regulation existed on January 1, 2013, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof or any state or any political subdivision thereof; or

(f) An operator of a payment system only to the extent that the payment system provides processing, clearing, or settlement services between or among persons who are all exempt under this section in connection with wire transfers, credit card transactions, debit card transactions, automated clearinghouse transfers, or similar fund transfers.

(2) An authorized delegate of a licensee or of an exempt entity, acting within the scope of its authority conferred by a written contract as described in section 8-2739, is not required to obtain a license under the Nebraska Money Transmit-

ters Act, except that such an authorized delegate shall comply with the other provisions of the act which apply to money transmission transactions.

Source: Laws 2013, LB616, § 24.

8-2725 License required; license not transferable or assignable.

(1) Except as otherwise provided in section 8-2724, a person shall not engage in money transmission without a license issued pursuant to the Nebraska Money Transmitters Act.

(2) A person is engaged in money transmission if the person provides money transmission services to any resident of this state even if the person providing money transmission services has no physical presence in this state.

(3) If a licensee has a physical presence in this state, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

(4) A license issued pursuant to the act is not transferable or assignable.

Source: Laws 2013, LB616, § 25.

8-2726 License; applicant; qualifications; requirements.

To qualify for a license under the Nebraska Money Transmitters Act, an applicant, at the time of filing for a license, and a licensee at all times after a license is issued, shall satisfy the following requirements:

(1) Each applicant or licensee must have a net worth of not less than fifty thousand dollars, calculated in accordance with generally accepted accounting principles;

(2) The financial condition and responsibility, financial and business experience, and character and general fitness of the applicant or licensee must reasonably warrant the belief that the applicant's or licensee's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community. In determining whether this requirement is met and for purposes of investigating compliance with the act, the director may review and consider the relevant business records and capital adequacy of the applicant or licensee;

(3) Each corporate applicant or licensee must be in good standing in the state of its incorporation; and

(4) Each applicant or licensee must be registered or qualified to do business in the state.

Source: Laws 2013, LB616, § 26.

8-2727 License applicant; surety bond; alternate security; duration.

(1)(a) Except as provided in subsection (2) of this section, an applicant shall submit, with the application, a surety bond issued by a bonding company or insurance company authorized to do business in this state and acceptable to the director in the principal sum of one hundred thousand dollars. The director may increase the amount of the bond to a maximum of two hundred fifty thousand dollars for good cause.

(b) The bond shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the

faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with money transmission. In the case of a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the bond or the director may bring suit on behalf of any claimant, either in one action or in successive actions.

(2) Upon filing of the report required by section 8-2734 and the information required by subdivision (2)(b) of such section, a licensee shall maintain or increase its surety bond to reflect the total dollar amount of money transmitter transactions by the licensee in this state in the most recent four calendar quarters for which data is available before the date of the filing of the renewal application in accordance with the following table. A licensee may decrease its surety bond in accordance with the following table if the surety bond required is less than the amount of the surety bond on file with the department:

Dollar Amount of Money Transmitter Transactions	Surety Bond Required
\$ 0.00 to \$2,000,000.00	\$100,000.00
\$2,000,000.01 to \$4,000,000.00	\$150,000.00
\$4,000,000.01 to \$6,000,000.00	\$200,000.00
Over \$6,000,000.00	\$250,000.00

(3) If the department determines that a licensee does not maintain a surety bond in the amount required by subsection (2) of this section, the department shall give written notification to the licensee requiring it to increase the surety bond within thirty days to the amount required by such subsection.

(4) The director may at any time require the filing of a new or supplemental bond in the form as provided in subsection (1) of this section if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of a licensee or an applicant for a license or violations of the Nebraska Money Transmitters Act, any rule and regulation or order thereunder, or any state or federal law applicable to a licensee or an applicant for a license. The new or supplemental bond shall not exceed five hundred thousand dollars.

(5)(a) In lieu of the corporate surety bond or bonds required by this section or of any portion of the principal thereof, the applicant or licensee may deposit, with the director or with such banks or trust companies located in this state or with any federal reserve bank as the applicant or licensee may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond.

(b) The licensee shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The licensee shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent and is not in

violation of the Nebraska Money Transmitters Act, such licensee shall be permitted to receive the interest or dividends on such deposit.

(c) The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be paid by the licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

(6) The surety bond shall remain in effect until cancellation, which may occur only after thirty days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during the period the surety bond was in effect.

(7) The surety bond shall remain in place for at least five years after the licensee ceases money transmission in this state, except that the director may permit the surety bond to be reduced or eliminated before that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or such other form of security acceptable to the director for the surety bond in place at the time the licensee ceases money transmission in the state.

Source: Laws 2013, LB616, § 27; Laws 2017, LB186, § 1.

8-2728 Licensee; investments required; waiver.

(1) Each licensee shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This requirement may be waived by the director if the dollar volume of a licensee's outstanding payment instruments and stored value does not exceed the bond or other security posted by the licensee pursuant to section 8-2727.

(2) Permissible investments, even if commingled with other assets of the licensee, are deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

Source: Laws 2013, LB616, § 28.

8-2729 License application; form; contents.

Each application for a license under the Nebraska Money Transmitters Act shall be made in writing and in a form prescribed by the director. Each application shall state or contain:

(1) For all applicants:

(a) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(b) The history of the applicant's criminal convictions and material litigation for the five-year period before the date of the application;

(c) A description of the activities conducted by the applicant and a history of operations;

(d) A description of the business activities in which the applicant seeks to be engaged in this state;

(e) A list identifying the applicant's proposed authorized delegates in this state, if any, at the time of the filing of the application;

(f) A sample authorized delegate contract, if applicable;

(g) A sample form of payment instrument, if applicable;

(h) The locations at which the applicant and its authorized delegates, if any, propose to conduct money transmission in this state; and

(i) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable;

(2) If the applicant is a corporation, the applicant shall also provide:

(a) The date of the applicant's incorporation and state of incorporation;

(b) A certificate of good standing from the state in which the applicant was incorporated;

(c) A certificate of authority from the Secretary of State to conduct business in this state;

(d) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and a disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(e) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under the act;

(f) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of any key shareholder of the applicant;

(g) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application of every executive officer or key shareholder of the applicant;

(h) A copy of the applicant's most recent audited financial statement including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this subdivision; and

(i) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and

(3) If the applicant is not a corporation, the applicant shall also provide:

(a) The name, business and residence addresses, personal financial statement, and employment history, for the five-year period immediately before the date of the application, of each principal of the applicant and the name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of any other person or persons who will be in charge of the applicant's money transmission activities;

(b) A copy of the applicant's registration or qualification to do business in this state;

(c) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(d) Copies of the applicant's audited financial statements including balance sheet, statement of income or loss, and statement of changes in financial position for the current year and, if available, for the immediately preceding two-year period.

Source: Laws 2013, LB616, § 29.

8-2730 Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; duties; department; duties.

(1) Effective July 1, 2014, the department shall require licensees under the Nebraska Money Transmitters Act to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but are not limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Checks of an applicant's or a licensee's criminal history through fingerprint or other data bases, except that the department shall not require the submission of fingerprints by (A) an executive officer or director of an applicant or licensee which is either a publicly traded company or a wholly owned subsidiary of a publicly traded company or (B) an applicant or licensee who has previously submitted the fingerprints of an executive officer or director directly to the Nationwide Mortgage Licensing System and Registry and the Federal Bureau of Investigation will accept such fingerprints for a criminal background check;

(ii) Checks of civil or administrative records;

(iii) Checks of an applicant's or a licensee's credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting, as necessary, of renewal processing or reporting dates;

(d) Information and reports pertaining to authorized delegates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 8-2731.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2013, LB616, § 30.

8-2731 Supervisory information sharing; information and material; how treated; applicability; director; powers.

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with money transmitter industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to privilege or confidentiality under subdivision (a) of this subsection shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (a) of this subsection that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, the Money Transmitter Regulators Association, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Source: Laws 2013, LB616, § 31.

8-2732 Application fee; processing fee.

Each applicant shall submit, with the application, an application fee of one thousand dollars, and any processing fee allowed under subsection (2) of section 8-2730 which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof.

Source: Laws 2013, LB616, § 32.

8-2733 Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.

(1) Upon the filing of a complete application under the Nebraska Money Transmitters Act, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by the act and has paid the required application or license fee, the director shall issue a license to the applicant authorizing the applicant to engage in money transmission in this state. If these requirements have not been met, the director shall deny the application in writing, setting forth the reasons for the denial.

(2) The director shall approve or deny every application for an original license within one hundred twenty days after the date a complete application is submitted, which period may be extended by the written consent of the

applicant. The director shall notify the applicant of the date when the application is deemed complete.

(3) Any applicant aggrieved by a denial issued by the director under the act may, at any time within fifteen business days after the date of the denial, request a hearing before the director. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department.

(4) If an applicant for a license under the Nebraska Money Transmitters Act does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency or deficiencies, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

Source: Laws 2013, LB616, § 33; Laws 2017, LB185, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

8-2734 License; renewal application; licensing fee; processing fee; report; contents.

(1) Initial licenses shall remain in full force and effect until the next succeeding December 31. Each licensee shall, annually on or before December 31 of each year, file a license renewal application and pay to the director a license fee of two hundred fifty dollars and any processing fee allowed under subsection (2) of section 8-2730, both of which shall not be subject to refund.

(2) The renewal application and license fee shall be accompanied by a report, in a form prescribed by the director, which shall include:

(a) A copy of the licensee's most recent audited consolidated annual financial statement including balance sheet, statement of income or loss, statement of changes in shareholders' equity, and statement of changes in financial position, or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(b) The number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of payment instruments currently outstanding, for the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty days before the renewal date;

(c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under the Nebraska Money Transmitters Act;

(d) A list of the licensee's permissible investments; and

(e) A list of the locations, if any, within this state at which money transmission is being conducted by either the licensee or its authorized delegates.

Source: Laws 2013, LB616, § 34; Laws 2016, LB778, § 2.

8-2735 Licensee; notice to director; when; report; contents.

(1) A licensee shall file notice with the director within thirty calendar days after any material change in information provided in a licensee's application as prescribed by the director.

(2) A licensee shall file a report with the director within five business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under any bankruptcy law of the United States for liquidation or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The filing of an action to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, manager, or director of, or controlling person of, the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony.

Source: Laws 2013, LB616, § 35.

8-2736 Acquisition of control of licensee; notice to director; director; duties; powers; disapproval; grounds; notice; hearing.

(1) No person acting personally or as an authorized delegate shall acquire control of any licensee under the Nebraska Money Transmitters Act without first giving thirty days' notice to the director on forms prescribed by the director of such proposed acquisition.

(2) The director, upon receipt of such notice, shall act upon the proposed acquisition within thirty days, and unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring person has not furnished all the information required by the director.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired licensee;

(ii) The business experience, character, and general fitness of any acquiring person or of any of the proposed management personnel of the acquiring person indicate that the acquired licensee would not be operated honestly, carefully, or efficiently; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the director.

(b) The director may require that any acquiring person comply with the application requirements of section 8-2729.

(c) The director shall notify the acquiring person in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(d) Within fifteen business days after receipt of written notice of disapproval, the acquiring person may request a hearing on the proposed acquisition. The hearing shall be in accordance with the Administrative Procedure Act and rules and regulations of the department. Following such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2013, LB616, § 36.

Cross References

Administrative Procedure Act, see section 84-920.

8-2737 Onsite examination of licensee; notice; examination fee; costs; director; powers.

(1) The director may conduct an annual onsite examination of a licensee upon reasonable written notice to the licensee. The director may examine a licensee without prior notice if the director has a reasonable basis to believe that the licensee is in noncompliance with the Nebraska Money Transmitters Act. If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay an examination fee and the director shall charge for the actual cost of the examination at an hourly rate set by the director which is sufficient to cover all reasonable expenses associated with the examination. The onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The director, in lieu of an onsite examination, may accept the examination report of an agency of another state or a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the director. The licensee shall be responsible for the reasonable expenses incurred by the department, the agencies of another state, or an independent licensed or certified public accountant in making the examination or report.

(2) The director may request financial data from a licensee in addition to that required under section 8-2734 or conduct an onsite examination of any authorized delegate or location of a licensee within this state without prior notice to the authorized delegate or licensee only if the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with the Nebraska Money Transmitters Act. When the director examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of such examination. When the director examines a licensee's location, the licensee shall pay all reasonably incurred costs of such examination.

Source: Laws 2013, LB616, § 37.

8-2738 Licensee; books, accounts, and records.

(1) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years which shall be open to inspection by the director:

- (a) A record of each payment instrument and stored value sold;
- (b) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly;
- (c) Settlement sheets received from authorized delegates;
- (d) Bank statements and bank reconciliation records;
- (e) Records of outstanding payment instruments and stored value;
- (f) Records of each payment instrument and stored value paid;
- (g) A list of the names and addresses of all of the licensee's authorized delegates; and
- (h) Any other records the director reasonably requires by rule or regulation or order.

(2) Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section.

(3) Records may be maintained at a location other than within this state so long as the records are made accessible to the director on seven business days' written notice.

Source: Laws 2013, LB616, § 38.

8-2739 Licensee; authorized delegate; contract; contents.

A licensee desiring to conduct money transmission through an authorized delegate shall authorize each authorized delegate to operate pursuant to an express written contract which, for contracts entered into on or after January 1, 2014, shall provide the following:

- (1) That the licensee appoints the person as its authorized delegate with authority to engage in the sale and issue of payment instruments or engage in the business of money transmission on behalf of the licensee;
- (2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the director; and
- (3) That the licensee is subject to supervision and regulation by the director.

Source: Laws 2013, LB616, § 39.

8-2740 Authorized delegate; duties.

(1) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(2) An authorized delegate shall conduct all money transmission strictly in accordance with the licensee's written procedures provided to the authorized delegate.

(3) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(4) An authorized delegate is deemed to consent to the director's inspection with or without prior notice to the licensee or authorized delegate.

(5) An authorized delegate is under a duty to act only as authorized under the contract with the licensee and the Nebraska Money Transmitters Act. An

authorized delegate who exceeds its authority is subject to cancellation of its contract and further disciplinary action by the director.

(6) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time such funds are received by such authorized delegate until such time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property is impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

Source: Laws 2013, LB616, § 40.

8-2741 License; suspension or revocation; grounds; director; powers and duties; hearing; surrender; cancellation; expiration.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Money Transmitters Act if he or she finds:

(a) Any fact or condition exists that, if it had existed at the time when the licensee applied for its original or renewal license, would have been grounds for denying such application;

(b) The licensee's net worth has become inadequate and the licensee, after ten days' written notice from the director, failed to take such steps as the director deems necessary to remedy such deficiency;

(c) The licensee knowingly violated any material provision of the act or any rule or order validly adopted and promulgated under the act;

(d) The licensee conducted money transmission in an unsafe or unsound manner;

(e) The licensee is insolvent;

(f) The licensee has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they became due;

(g) The licensee filed for liquidation or reorganization under any bankruptcy law;

(h) The licensee refused to permit the director to make any examination authorized by the act; or

(i) The licensee willfully failed to make any report required by the act.

(2) In determining whether a licensee is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the licensee.

(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, key shareholders, partners, or members for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 8-2734 and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 8-2727, 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.

(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, key shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 2013, LB616, § 41.

Cross References

Administrative Procedure Act, see section 84-920.

8-2742 Authorized delegate; suspension or revocation of designation; grounds; director; powers and duties; hearing; final order; application to modify or rescind.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, issue an order suspending or revoking the designation of an authorized delegate if the director finds that:

(a) The authorized delegate violated the Nebraska Money Transmitters Act or a rule or regulation adopted and promulgated or an order issued under the act;

(b) The authorized delegate did not cooperate with an examination or investigation by the director;

(c) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(d) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(e) The competence, experience, character, or general fitness of the authorized delegate or a controlling person of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to engage in money transmission services; or

(f) The authorized delegate is engaged in an unsafe or unsound practice.

(2) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the authorized delegate.

(3) Any authorized delegate to whom a final order is issued under this section may apply to the director to modify or rescind the order. The director shall not grant the application unless the director finds that (a) it is in the public interest to do so and (b) it is reasonable to believe that the person will comply with the

act and any rule, regulation, or order issued under the act if and when that person is permitted to resume being an authorized delegate of a licensee.

Source: Laws 2013, LB616, § 42.

Cross References

Administrative Procedure Act, see section 84-920.

8-2743 Cease and desist order; notice; hearing; vacation or modification of order; when; judicial review; enforcement.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated the Nebraska Money Transmitters Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of a written request from the affected person, a hearing will be scheduled within thirty business days after the date of receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may issue an order against a licensee to cease and desist from engaging in money transmission through an authorized delegate that is the subject of a separate order pursuant to section 8-2742.

(3) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(4) A person aggrieved by a cease and desist order of the department may obtain judicial review of the order. The review shall be in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for enforcement of the cease and desist order.

Source: Laws 2013, LB616, § 43.

Cross References

Administrative Procedure Act, see section 84-920.

8-2744 Violations; orders authorized.

If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Nebraska Money Transmitters Act or any rule, regulation, or order of the director thereunder, the director may order such person to pay (1) an administrative fine of not more than five thousand dollars for each separate violation and (2) the costs of investigation.

Source: Laws 2013, LB616, § 44.

Cross References

Administrative Procedure Act, see section 84-920.

8-2745 Violations; penalties.

(1) Except as provided in subsections (2) and (3) of this section, any person violating the Nebraska Money Transmitters Act or any rule, regulation, or order of the director made pursuant to the act or who engages in any act, practice, or transaction declared by the Nebraska Money Transmitters Act to be unlawful is guilty of a Class III misdemeanor.

(2) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under the act or who intentionally makes a false entry or omits a material entry in such a record is guilty of a Class I misdemeanor.

(3) An individual who knowingly engages in money transmission for which a license is required under the act without being licensed under the act is guilty of a Class I misdemeanor.

Source: Laws 2013, LB616, § 45.

8-2746 Rules and regulations.

The director may adopt and promulgate rules and regulations and issue orders, rulings, findings, and demands as may be necessary to carry out the purposes of the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 46.

8-2747 Fees, charges, costs, and fines; disposition.

(1) The department shall remit all fees, charges, and costs collected by the department pursuant to the Nebraska Money Transmitters Act to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) The department shall remit fines collected under the act to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2013, LB616, § 47.

8-2748 Repealed. Laws 2016, LB778, § 9.

ARTICLE 28

REAL ESTATE FINANCING ENFORCEMENT AND SERVICING

Section

8-2801. Real estate loan agreement, mortgage, deed of trust, security instrument; enforcement and servicing; local ordinance or resolution; limitation.

8-2801 Real estate loan agreement, mortgage, deed of trust, security instrument; enforcement and servicing; local ordinance or resolution; limitation.

(1) The enforcement and servicing of any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured shall be pursuant only to state and federal law. No local ordinance or resolution may add to, change, interfere with any rights or obligations of, impose upon, or require payment of fees or taxes of any kind by, a lender, mortgagee, beneficiary, or trustee in a trust deed or servicer relating to, or delay or affect the enforcement and servicing of, any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured.

(2) Subsection (1) of this section shall not apply to any ordinance or resolution adopted pursuant to the Community Development Law.

Source: Laws 2014, LB788, § 1.

Cross References

Community Development Law, see section 18-2101.

CHAPTER 9

BINGO AND OTHER GAMBLING

Article.

1. General Provisions. 9-1,101.
2. Bingo. 9-262.
3. Pickle Cards. 9-352.
4. Lotteries and Raffles. 9-433, 9-434.
6. County and City Lotteries. 9-601 to 9-652.
7. Gift Enterprises. 9-701.
8. State Lottery. 9-812 to 9-836.01.
10. Nebraska Commission on Problem Gambling. 9-1001 to 9-1007.

ARTICLE 1

GENERAL PROVISIONS

Section

- 9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

(1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts. The report submitted to the Legislature shall be submitted electronically.

(2) The Charitable Gaming Operations Fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and providing administrative support for the Nebraska Commission on Problem Gambling. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) On or before November 1 each year, the State Treasurer shall transfer one hundred thousand dollars from the Charitable Gaming Operations Fund to the

Compulsive Gamblers Assistance Fund, except that no transfer shall occur if the Charitable Gaming Operations Fund contains less than one hundred thousand dollars.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(6) For administrative purposes only, the Nebraska Commission on Problem Gambling shall be located within the Charitable Gaming Division. The division shall provide office space, furniture, equipment, and stationery and other necessary supplies for the commission. Commission staff shall be appointed, supervised, and terminated by the director of the Gamblers Assistance Program pursuant to section 9-1004.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1; Laws 2010, LB879, § 1; Laws 2012, LB782, § 11; Laws 2013, LB6, § 8; Laws 2018, LB945, § 9.

Effective date April 5, 2018.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
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.
Nebraska State Funds Investment Act, see section 72-1260.
State Athletic Commissioner, office and duties, see section 81-8,128.

ARTICLE 2

BINGO

Section

9-262. Violations; penalties; enforcement; venue.

9-262 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Bingo Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee, or any employee or agent thereof, to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Bingo Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of the state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operation except as authorized by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the Nebraska Bingo Act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of bingo activity.

(3) Intentionally employing or possessing any device to facilitate cheating in a bingo game or using any fraudulent scheme or technique in connection with any bingo game is a violation of the Nebraska Bingo Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the Nebraska Bingo Act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Bingo Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the Nebraska Bingo Act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1978, LB 351, § 47; Laws 1983, LB 259, § 32; Laws 1984, LB 949, § 43; Laws 1985, LB 408, § 16; R.S.Supp., 1985, § 9-170;

Laws 1986, LB 1027, § 63; Laws 1987, LB 523, § 1; Laws 1988, LB 295, § 33; Laws 1995, LB 344, § 9; Laws 1997, LB 248, § 8; Laws 2015, LB605, § 1.

ARTICLE 3 PICKLE CARDS

Section

9-352. Violations; penalties; enforcement; venue.

9-352 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who violates any provision of the Nebraska Pickle Card Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked. Such matters may also be referred to any other state licensing agencies for appropriate action.

(2) Each of the following violations of the Nebraska Pickle Card Lottery Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Making or receiving payment of a portion of the purchase price of pickle cards by a seller of pickle cards to a buyer of pickle cards to induce the purchase of pickle cards or to improperly influence future purchases of pickle cards;

(c) Using bogus, counterfeit, or nonopaque pickle cards, pull tabs, break opens, punchboards, jar tickets, or any other similar card, board, or ticket or substituting or using any pickle cards, pull tabs, or jar tickets that have been marked or tampered with;

(d) Knowingly filing a false report under the Nebraska Pickle Card Lottery Act;

(e) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery by the sale of pickle cards; or

(f) Knowingly selling or distributing or knowingly receiving with intent to sell or distribute pickle cards or pickle card units without first obtaining a license in accordance with the Nebraska Pickle Card Lottery Act pursuant to section 9-329, 9-329.03, 9-330, or 9-332.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery by the sale of pickle cards or use of any fraudulent scheme or

technique in connection with any lottery by the sale of pickle cards is a violation of the Nebraska Pickle Card Lottery Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Pickle Card Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 118; Laws 1987, LB 523, § 2; Laws 1988, LB 1232, § 50; Laws 1995, LB 344, § 23; Laws 1997, LB 248, § 20; Laws 2015, LB605, § 2.

ARTICLE 4

LOTTERIES AND RAFFLES

Section

9-433. Lottery or raffle; local control; section, how construed.

9-434. Violations; penalties; enforcement; venue.

9-433 Lottery or raffle; local control; section, how construed.

(1) Any county or incorporated municipality may, by resolution or ordinance, tax, regulate, control, or prohibit any lottery or raffle within the boundaries of such county or the corporate limits of such incorporated municipality. No county may impose a tax or otherwise regulate, control, or prohibit any lottery within the corporate limits of an incorporated municipality. Any tax imposed pursuant to this subsection shall be remitted to the general fund of the county or incorporated municipality imposing such tax.

(2) Nothing in this section shall be construed to authorize any lottery or raffle not otherwise authorized under Nebraska law.

Source: Laws 1983, LB 259, § 60; Laws 1984, LB 949, § 69; R.S.Supp.,1984, § 9-195; Laws 1986, LB 1027, § 154; Laws 2017, LB217, § 1.

9-434 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of

the Nebraska Lottery and Raffle Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee or employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Lottery and Raffle Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities authorized under Chapter 9 in consideration for obtaining any license, authorization, permission, or privileges to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter; or

(b) Knowingly filing a false report under the Nebraska Lottery and Raffle Act.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or raffle or using any fraudulent scheme or technique in connection with any lottery or raffle is a violation of the Nebraska Lottery and Raffle Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Lottery and Raffle Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 155; Laws 1987, LB 523, § 3; Laws 1995, LB 344, § 28; Laws 1997, LB 248, § 27; Laws 2015, LB605, § 3.

ARTICLE 6

COUNTY AND CITY LOTTERIES

- Section
 9-603. Definitions, where found.
 9-606.03. Keno writer, defined.
 9-614. Lottery operator, defined.
 9-615.01. Lottery worker, defined.
 9-631.02. Keno writer; exemption from licensure.
 9-650. Segregation of gross proceeds; use of interest; records; requirements; Tax Commissioner; powers.
 9-652. Violations; penalties; enforcement; venue.

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; Laws 2014, LB259, § 1.

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; Laws 2014, LB259, § 2.

9-606.03 Keno writer, defined.

(1) Keno writer means a person whose primary responsibilities include accepting inside tickets or other requests for wagers and payments of wagers from players, issuing outside tickets, voiding tickets, and redeeming winning tickets.

(2) Keno writer does not include a keno manager, a lottery operator, or any other person who is directly in charge of the manual selection of numbers.

Source: Laws 2014, LB259, § 3.

9-614 Lottery operator, defined.

Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the Nebraska Uniform Limited Liability Company Act, or incorporated under the Nebraska Model Business Corporation Act.

Source: Laws 1989, LB 767, § 55; Laws 1990, LB 1055, § 6; Laws 1993, LB 121, § 114; Laws 1995, LB 109, § 194; Laws 2010, LB888, § 98; Laws 2013, LB283, § 1; Laws 2014, LB749, § 237.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Uniform Limited Liability Company Act, see section 21-101.

9-615.01 Lottery worker, defined.

Lottery worker shall mean any person, other than a keno writer, who performs work directly related to the conduct of a lottery, including, but not limited to, winning number selection, winning number verification, record keeping, shift checkout and review of keno writer banks, and security.

Source: Laws 2002, LB 545, § 49; Laws 2014, LB259, § 4.

9-631.02 Keno writer; exemption from licensure.

A person who is a keno writer and has no direct responsibility for the selection of numbers shall not be considered a lottery worker and shall not be required to be licensed for purposes of the Nebraska County and City Lottery Act.

Source: Laws 2014, LB259, § 5.

9-650 Segregation of gross proceeds; use of interest; records; requirements; Tax Commissioner; powers.

(1) The gross proceeds of any lottery, less the amount awarded in prizes and any salary, fee, or commission paid to a licensed lottery operator plus any interest on such funds, shall be segregated from any other revenue and placed in a separate account of the lottery operator and the county, city, or village. If a lottery operator is conducting a lottery on behalf of a county, city, or village, such proceeds, including any interest, shall be transferred from the lottery operator's separate account to a separate account of the county, city, or village. Any interest received by a county, city, or village from the proceeds of the lottery shall be used solely for community betterment purposes.

(2) During the hours that keno is conducted at a sales outlet location, cash constituting the starting bank of the lottery operator conducting the keno game and cash receipts from the sale of keno tickets shall be segregated from all other revenue of the sales outlet location. Subject to the adoption and promulgation of rules and regulations by the department setting forth recordkeeping and reporting criteria for lottery operators, counties, cities, and villages that request authorization from the department for the use of electronic transfers from satellite locations, cash receipts from the sale of keno tickets shall remain segregated from all other revenue of the sales outlet location until deposited in the bank account of the sales outlet location, lottery operator, county, city, or village. Such bank account shall be designated by the lottery operator, county, city, or village.

(3) The Tax Commissioner may authorize the electronic transfer of funds from the nonsegregated general business account of a sales outlet location to the bank account of a lottery operator, county, city, or village as long as such funds are transferred no later than five business days following the day the funds were collected. To facilitate the electronic transfer of such funds to a lottery operator, county, city, or village that has met the requirements of the rules and regulations adopted and promulgated pursuant to subsection (2) of this section, a sales outlet location may first deposit such funds into a nonsegregated general business account of the sales outlet location.

(4) The gross proceeds of any lottery, less the amount awarded in prizes, which are collected by a sales outlet location shall be deposited into the account

of the sales outlet location, lottery operator, county, city, or village no later than five business days following the day such gross proceeds were collected.

(5) Separate records shall be maintained by such licensed county, city, or village. Records required by the Nebraska County and City Lottery Act shall be preserved for at least three years unless otherwise provided by rules and regulations adopted and promulgated by the department. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries and gross proceeds from such lottery at any time. Any county, city, or village shall, upon proper written request, deliver all such records to the department or other law enforcement agency for investigation.

Source: Laws 1989, LB 767, § 89; Laws 1991, LB 427, § 67; Laws 1993, LB 563, § 20; Laws 2018, LB724, § 1.
Effective date July 19, 2018.

9-652 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who knowingly or intentionally violates any provision of the Nebraska County and City Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state or any agencies or political subdivisions of this state any compensation or reward or share of the money for property paid or received through gambling activities regulated under the act in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under the act or any rules and regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or using any fraudulent scheme or technique in connection with any lottery is a violation of the act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such device, scheme, or technique is one thousand five hundred dollars or more.

(4) It shall be the duty of the Attorney General or appropriate county attorney to prosecute and defend all proceedings initiated in any court or otherwise under the act.

(5) The failure to do any act required by or under the Nebraska County and City Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1989, LB 767, § 92; Laws 1993, LB 563, § 21; Laws 1995, LB 344, § 33; Laws 1997, LB 248, § 34; Laws 2015, LB605, § 4.

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) Financial institution means a bank, savings bank, building and loan association, or savings and loan association, whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency as defined in section 8-101.03; or any other similar organization which is covered by federal deposit insurance;

(b) 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;

(c) Operator means any person, firm, corporation, financial institution, 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

(d) Savings promotion raffle means a contest conducted by a financial institution or 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 is 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 financial institution or 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, the Nebraska Small Lottery and Raffle Act, or the State Lottery 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; Laws 2015, LB160, § 1; Laws 2017, LB140, § 147.

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.

State Lottery Act, see section 9-801.

ARTICLE 8 STATE LOTTERY

Section

- 9-812. State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Nebraska Education Improvement Fund; created; use; investment; unclaimed prize money; use.
- 9-831. Advertising on problem gambling prevention, education, and awareness messages; requirements.
- 9-836.01. Division; sale of tangible personal property; distribution of profits.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Nebraska Education Improvement 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) 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 Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. 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 Education Improvement 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 9-1006;

(b) Beginning July 1, 2016, 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 Education Improvement Fund;

(c) 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;

(d) 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

(e) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assis-

tance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006.

(4) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsection (3) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated by the Legislature. The fund shall be allocated, after actual and necessary administrative expenses, as provided in this section for fiscal years 2016-17 through 2020-21. A portion of each allocation may be retained by the agency to which the allocation is made or the agency administering the fund to which the allocation is made for actual and necessary expenses incurred by such agency for administration, evaluation, and technical assistance related to the purposes of the allocation, except that no amount of the allocation to the Nebraska Opportunity Grant Fund may be used for such purposes. On or before December 31, 2019, the Education Committee of the Legislature shall electronically submit recommendations to the Clerk of the Legislature regarding how the fund should be allocated to best advance the educational priorities of the state for the five-year period beginning with fiscal year 2021-22. For fiscal year 2016-17, an amount equal to ten percent of the revenue allocated to the Education Innovation Fund and to the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be retained in the Nebraska Education Improvement Fund. For fiscal years 2017-18 through 2020-21, an amount equal to ten percent of the revenue received by the Nebraska Education Improvement Fund in the prior fiscal year shall be retained in the fund. For fiscal years 2016-17 through 2020-21, the remainder of the fund, after payment of any learning community transition aid pursuant to section 79-10,145, shall be allocated as follows:

(a) One percent of the allocated funds to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

(b) Seventeen percent of the allocated funds to the Department of Education Innovative Grant Fund to be used (i) for competitive innovation grants pursuant to section 79-1054 and (ii) to carry out the purposes of section 79-759;

(c) Nine percent of the allocated funds to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;

(d) Eight percent of the allocated funds to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;

(e) Sixty-two percent of the allocated funds to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in conjunction with appropriations from the General Fund; and

(f) Three percent of the allocated funds to fund distance education incentives pursuant to section 79-1337.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, the Nebraska Education Improvement 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; Laws 2012, LB1079, § 9; Laws 2013, LB6, § 9; Laws 2013, LB366, § 8; Laws 2013, LB495, § 1; Laws 2013, LB497, § 1; Laws 2014, LB967, § 2; Laws 2015, LB519, § 1; Laws 2016, LB930, § 1; Laws 2016, LB1067, § 1; Laws 2017, LB512, § 5.

Cross References

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

Expanded Learning Opportunity Grant Program Act, see section 79-2501.

Nebraska Capital Expansion Act, see section 72-1269.

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

Nebraska Opportunity Grant Act, see section 85-1901.

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

9-831 Advertising on problem gambling prevention, education, and awareness messages; requirements.

The division shall spend not less than five percent of the advertising budget for the state lottery on problem gambling prevention, education, and awareness messages. The division shall coordinate messages developed under this section with the prevention, education, and awareness messages in use by or developed in conjunction with the Gamblers Assistance Program established pursuant to section 9-1005. For purposes of this section, the advertising budget for the state lottery includes amounts budgeted and spent for advertising, promotions, incentives, public relations, marketing, or contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing, but does not include in-kind contributions by media outlets.

Source: Laws 2006, LB 1039, § 2; Laws 2013, LB6, § 10.

9-836.01 Division; sale of tangible personal property; distribution of profits.

The division may endorse and sell for profit tangible personal property related to the lottery. Any money received as profit by the division pursuant to this section shall be remitted to the State Treasurer for credit to the State Lottery Operation Trust Fund to be distributed to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Im-

provement Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund pursuant to the requirements of section 9-812.

Source: Laws 1994, LB 694, § 118; Laws 1998, LB 924, § 17; Laws 2003, LB 574, § 22; Laws 2010, LB956, § 2; Laws 2013, LB497, § 2.

ARTICLE 10

NEBRASKA COMMISSION ON PROBLEM GAMBLING

Section

- 9-1001. Funding for assistance to problem gamblers; legislative findings and intent.
- 9-1002. Terms, defined.
- 9-1003. Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.
- 9-1004. Commission; officers; expenses; duties; director; duties; rules and regulations; report.
- 9-1005. Gamblers Assistance Program; created; duties.
- 9-1006. Compulsive Gamblers Assistance Fund; created; use; investment.
- 9-1007. Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

9-1001 Funding for assistance to problem gamblers; legislative findings and intent.

The Legislature finds that the main sources of funding for assistance to problem gamblers are the Charitable Gaming Operations Fund as provided in section 9-1,101 and the State Lottery Operation Trust Fund as provided in section 9-812. It is the intent of the Legislature that such funding be used primarily for counseling and treatment services for problem gamblers and their families who are residents of Nebraska.

Source: Laws 2013, LB6, § 1.

9-1002 Terms, defined.

For purposes of sections 9-1001 to 9-1007:

- (1) Commission means the Nebraska Commission on Problem Gambling;
- (2) Division means the Charitable Gaming Division of the Department of Revenue;
- (3) Problem gambling means maladaptive gambling behavior that disrupts personal, family, or vocational pursuits; and
- (4) Program means the Gamblers Assistance Program.

Source: Laws 2013, LB6, § 2.

9-1003 Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.

(1) The Nebraska Commission on Problem Gambling is created. For administrative purposes only, the commission shall be within the division. The commission shall have nine members appointed by the Governor as provided in this section, subject to confirmation by a majority of the members of the Legislature. The members of the commission shall have no pecuniary interest, either directly or indirectly, in a contract with the program providing services to problem gamblers and shall not be employed by the commission or the Department of Revenue.

(2) By July 1, 2013, the Governor shall appoint members of the commission as follows:

- (a) One member with medical care or mental health expertise;
- (b) One member with expertise in banking and finance;
- (c) One member with legal expertise;
- (d) One member with expertise in the field of education;
- (e) Two members who are consumers of problem gambling services;
- (f) One member with data analysis expertise; and
- (g) Two members who are residents of the state and are representative of the public at large.

(3) The terms of the members shall be for three years, except that the Governor shall designate three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2014, three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2015, and three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2016. The Governor shall appoint members to fill vacancies in the same manner as the original appointments, and such appointees shall serve for the remainder of the unexpired term.

(4) Beginning July 1, 2013, the commission shall adopt bylaws governing its operation and the commission shall meet at least four times each calendar year and may meet more often on the call of the chairperson. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the commission. Meetings of the commission are subject to the Open Meetings Act.

Source: Laws 2013, LB6, § 3.

Cross References

Open Meetings Act, see section 84-1407.

9-1004 Commission; officers; expenses; duties; director; duties; rules and regulations; report.

(1) The commission shall appoint one of its members as chairperson and such other officers as it deems appropriate. Members shall be reimbursed for their actual and necessary expenses in carrying out their duties as members of the commission as provided in sections 81-1174 to 81-1177.

(2) The commission shall develop guidelines and standards for the operation of the program and shall direct the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund.

(3) The commission shall appoint a director of the program, provide for office space and equipment, and support and facilitate the work of the program. The director may hire, terminate, and supervise commission and program staff, shall be responsible for the duties of the office and the administration of the program, and shall electronically provide an annual report to the General Affairs Committee of the Legislature which includes issues and policy concerns that relate to problem gambling in Nebraska. All documents, files, equipment, effects, and records belonging to the State Committee on Problem Gambling on June 30, 2013, shall become the property of the commission on July 1, 2013.

(4) The commission shall (a) provide for a process for the evaluation and approval of provider applications and contracts for treatment and other services funded from the Compulsive Gamblers Assistance Fund and (b) develop standards and guidelines for training and certification of problem gambling counselors.

(5) The commission shall provide for (a) the review and use of evaluation data, (b) the use and expenditure of funds for education regarding problem gambling and prevention of problem gambling, and (c) the creation and implementation of outreach and educational programs regarding problem gambling for Nebraska residents.

(6) The commission may adopt and promulgate rules and regulations and engage in other activities it finds necessary to carry out its duties under sections 9-1001 to 9-1007.

(7) The commission shall submit a report within sixty days after the end of each fiscal year to the Governor and the Clerk of the Legislature that provides details of the administration of the program and distribution of funds from the Compulsive Gamblers Assistance Fund. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2013, LB6, § 4.

9-1005 Gamblers Assistance Program; created; duties.

The Gamblers Assistance Program is created. The program shall:

(1) Contract with providers of problem gambling treatment services to Nebraska consumers;

(2) Promote public awareness of the existence of problem gambling and the availability of treatment services;

(3) Evaluate the existence and scope of problem gambling in Nebraska and its consequences through means and methods determined by the commission; and

(4) Perform such other duties and provide such other services as the commission determines.

Source: Laws 2013, LB6, § 5.

9-1006 Compulsive Gamblers Assistance Fund; created; use; investment.

The Compulsive Gamblers Assistance Fund is created. The fund shall include revenue transferred from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101 and any other revenue received by the division or commission for credit to the fund from any other public or private source, including, but not limited to, appropriations, grants, donations, gifts, devises, bequests, fees, or reimbursements. The commission shall administer the fund for the operation of the Gamblers Assistance Program. The Director of Administrative Services shall draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the commission. Money from the Compulsive Gamblers Assistance Fund shall be used exclusively for the purpose of providing assistance to agencies, groups, organizations, and individuals that provide education, assistance, and counseling to individuals and families experiencing difficulty as a result of problem gambling, to promote the awareness of problem gamblers assistance programs, and to pay the costs and expenses of the

Gamblers Assistance Program, including travel. 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 1993, LB 138, § 33; R.S.Supp.,1994, § 9-804.05; Laws 1995, LB 275, § 17; Laws 2000, LB 659, § 3; Laws 2001, LB 541, § 5; R.S.Supp.,2002, § 83-162.04; Laws 2004, LB 1083, § 17; Laws 2005, LB 551, § 7; Laws 2008, LB1058, § 2; Laws 2009, LB189, § 2; R.S.1943, (2009), § 71-817; Laws 2013, LB6, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

9-1007 Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

(1) Except as otherwise provided in subsection (2) of this section, no person acting on behalf of the Division of Behavioral Health of the Department of Health and Human Services or the department shall make expenditures not required by contract obligations entered into before July 1, 2013, until the Gamblers Assistance Program created in section 9-1005 commences its duties.

(2) Any contract between the State of Nebraska and a provider of problem gambling services in existence on July 1, 2013, shall remain in full force and effect and is binding and effective upon the parties to the contract until the contract is terminated according to its terms or renegotiated by the commission.

(3) The Compulsive Gamblers Assistance Fund shall not be subject to any nonstatutory expenditure limitation from any source and shall be available for expenditure as provided in sections 9-1001 to 9-1006.

Source: Laws 2013, LB6, § 7.

CHAPTER 10

BONDS

Article.

1. General Provisions. 10-119.
7. School District Bonds. 10-703.01 to 10-716.01.
11. Nebraska Governmental Unit Security Interest Act. 10-1103.

ARTICLE 1

GENERAL PROVISIONS

Section

- 10-119. Precinct bonds; retirement; taxes; levy and collection; duties of county board and county treasurer.

10-119 Precinct bonds; retirement; taxes; levy and collection; duties of county board and county treasurer.

The county board shall, at the usual time of levying taxes in each year, levy a tax upon all the property of the proper precinct, sufficient to pay the annual interest on the bonds and the principal thereof, in accordance with the terms of the proposition under which the bonds were issued. Taxes so levied shall be collected by the county treasurer as other taxes are collected, and the proceeds of the levy shall be retained by the county treasurer and used for the payment of interest on the bonds and the principal thereof as the same become due to the holder thereof, except that in cities having a population of more than fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the money so collected shall be forwarded to or retained in the treasury of the city for the payment of bonds and interest for which the money was collected.

Source: Laws 1885, c. 8, § 2, p. 95; R.S.1913, § 384; Laws 1921, c. 191, § 2, p. 710; C.S.1922, § 301; C.S.1929, § 11-120; R.S.1943, § 10-119; Laws 2001, LB 420, § 7; Laws 2017, LB113, § 1.

ARTICLE 7

SCHOOL DISTRICT BONDS

Section

- 10-703.01. Issuance; election; notice; counting of ballots; canvass of vote.
 10-704. Repealed. Laws 2018, LB377, § 87.
 10-716.01. Repealed. Laws 2018, LB377, § 87.

10-703.01 Issuance; election; notice; counting of ballots; canvass of vote.

In all special elections called for voting on the question of issuing bonds of the school district, the county clerk or election commissioner or, if the school district lies in more than one county, the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question shall designate the polling places and appoint the election officials,

who need not be the regular election officials, and otherwise conduct the election as provided under the Election Act except as otherwise specifically provided in this section. Any special election held under this section shall be subject to section 32-405. The school district shall designate the form of ballot and reimburse the county clerk or election official for the expenses of conducting the election as provided in sections 32-1201 to 32-1208 and at the minimum rate as described in subdivision (2)(d) of section 32-1203. The school district officers shall give notice of the election at least twenty days prior to the election and cause the sample ballot to be published in a newspaper of general circulation in the school district one time not more than ten days nor less than three days prior to the election, and no notice of the election shall be required to be given by the county clerk or election commissioner. The notice of election shall state where ballots for early voting may be obtained.

The ballots shall be counted by the county clerk or election commissioner conducting the election and two disinterested persons appointed by him or her. When the polls are closed, the receiving board shall deliver the ballots to the county clerk or election commissioner conducting the election who, with the two disinterested persons appointed by him or her, shall proceed to count the ballots.

Ballots for early voting shall be furnished to the county clerk or election commissioner and ready for distribution by the county clerk or election commissioner conducting the election not less than fifteen days prior to the election.

When a school district lies in more than one county, the county clerk or election commissioner in any other county containing part of such school district shall, upon request, certify its registration books for those precincts in which the school district is located to the county clerk or election commissioner conducting the election and shall immediately forward all requests for ballots for early voting to the county clerk or election commissioner charged with the issuing of such ballots. Not less than five days prior to the election, the school district officers shall certify to the county clerk or election commissioner conducting the election a list of all registered voters of the school district in any other county or counties qualified to vote on the bond issue.

All ballots cast at the election shall be counted by the same board. When all the ballots have been counted, the returns of such election shall be turned over to the school board or board of education of the district in which the election was held for the purpose of making a canvass thereof.

The two disinterested persons appointed on the counting board shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered.

Source: Laws 1957, c. 352, § 1, p. 1198; Laws 1959, c. 26, § 1, p. 175; Laws 1972, LB 661, § 2; Laws 1973, LB 550, § 2; Laws 1979, LB 421, § 1; Laws 1984, LB 920, § 29; Laws 1992, LB 424, § 1; Laws 1994, LB 76, § 466; Laws 1997, LB 764, § 2; Laws 2002, LB 935, § 1; Laws 2003, LB 521, § 1; Laws 2005, LB 98, § 1; Laws 2014, LB946, § 1; Laws 2015, LB575, § 1.

Cross References

Election Act, see section 32-101.

10-704 Repealed. Laws 2018, LB377, § 87.

Operative date January 1, 2019.

10-716.01 Repealed. Laws 2018, LB377, § 87.

Operative date January 1, 2019.

ARTICLE 11

NEBRASKA GOVERNMENTAL UNIT SECURITY INTEREST ACT

Section

10-1103. Terms, defined.

10-1103 Terms, defined.

For purposes of the Nebraska Governmental Unit Security Interest Act:

(1) Authorizing statute means any statute which authorizes the issuance of bonds;

(2) Bond means any bond, note, warrant, loan agreement, lease, lease-purchase agreement, pledge agreement, agreement authorized by the governing body of a generating power agency pursuant to section 70-682, or other evidence of indebtedness for which a security interest is granted or a pledge made upon revenue or other property, including any limited tax revenue, to provide for payment or security;

(3) Governmental unit means the State of Nebraska, any county, school district, city, village, public power district, sanitary and improvement district, educational service unit, community college area, natural resources district, airport authority, fire protection district, hospital authority, joint entity created under the Interlocal Cooperation Act, joint public agency, instrumentality, or any other district, authority, or political subdivision of the State of Nebraska and governmental units as defined in subdivision (a)(45) of section 9-102, Uniform Commercial Code;

(4) Measure means any ordinance, resolution, or other enactment authorizing the issuance of bonds or authorizing an indenture with respect to bonds pursuant to an authorizing statute; and

(5) Owner means any holder, registered owner, or beneficial owner of a bond.

Source: Laws 2000, LB 929, § 19; Laws 2016, LB897, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

CHAPTER 11

BONDS AND OATHS, OFFICIAL

Article.

1. Official Bonds and Oaths. 11-105, 11-115.

ARTICLE 1

OFFICIAL BONDS AND OATHS

Section

11-105. Bonds and oaths; filing; time.

11-115. Bonds; failure to furnish; show cause order; effect.

11-105 Bonds and oaths; filing; time.

(1) Official bonds, with the oath endorsed thereon, shall be filed in the proper office within the following time:

(a) Of all officers elected at any general election, following receipt of their election certificate and not later than ten days before the first Thursday after the first Tuesday in January next succeeding the election;

(b) Of all appointed officers, within thirty days after their appointment; and

(c) Of officers elected at any special election and city and village officers, within thirty days after the canvass of the votes of the election at which they were chosen.

(2) The filing of the bond with the oath endorsed thereon does not authorize a person to take any official action prior to the beginning of his or her term of office pursuant to Article XVII, section 5, of the Constitution of Nebraska.

(3) In counties which provide a bond for county officers pursuant to subdivision (22) of section 11-119, such county officers are not required to comply with the timing requirements of subsection (1) of this section with regard to their official bond but shall file their oaths of office in the proper offices prior to the beginning of their terms of office.

Source: Laws 1881, c. 13, § 5, p. 95; R.S.1913, § 5711; C.S.1922, § 5041; C.S.1929, § 12-105; R.S.1943, § 11-105; Laws 1976, LB 534, § 1; Laws 2013, LB311, § 1.

11-115 Bonds; failure to furnish; show cause order; effect.

If any person elected or appointed to any office neglects to have his or her official bond executed and approved as provided by law and filed for record within the time limited by sections 11-101 to 11-122, the officer with whom the bond is required to be filed shall immediately issue an order to such person to show cause why he or she has failed to properly file such bond and why his or her office should not be declared vacant. If such person properly files the official bond within ten days of the issuance of the show cause order for appointed officials or before the date for taking office for elected officials, such filing shall be deemed to be in compliance with sections 11-101 to 11-122. If such person does not file the bond within ten days of the issuance of such order

for appointed officials or before the date for taking office for elected officials and sufficient cause is not shown within that time, his or her office shall thereupon ipso facto become vacant, and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office. This section does not apply to county officers covered pursuant to subdivision (22) of section 11-119.

Source: Laws 1881, c. 13, § 15, p. 97; R.S.1913, § 5721; C.S.1922, § 5051; C.S.1929, § 12-115; R.S.1943, § 11-115; Laws 1976, LB 534, § 2; Laws 2013, LB311, § 2.

CHAPTER 12

CEMETERIES

Article.

1. Wyuka Cemetery. 12-101.
4. Cemeteries in Cities of Less than 25,000 Population and Villages. 12-401.
5. Cemetery Associations. 12-501 to 12-532.
8. Maintenance and Improvement of Cemeteries. 12-808, 12-812.
11. Burial Pre-Need Sales. 12-1109 to 12-1114.
12. Unmarked Human Burial Sites. 12-1205, 12-1208.
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; retirement plan reports; duties.

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

(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) Beginning December 31, 1998, through December 31, 2017:

(a) 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; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the trustees shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the trustees do not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, Wyuka Cemetery. All costs of the audit shall be paid by Wyuka Cemetery. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

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; Laws 2014, LB759, § 3; Laws 2017, LB415, § 2.

ARTICLE 4

CEMETERIES IN CITIES OF LESS THAN 25,000 POPULATION AND VILLAGES

Section

12-401. Cemetery board; members; appointment; terms; vacancies.

12-401 Cemetery board; members; appointment; terms; vacancies.

The mayor of any city having fewer than twenty-five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, by and with the consent of the council or a majority thereof, and the chairperson of the board of trustees of any village, by and with the consent of the village board or a majority thereof, may appoint a board of not fewer than three nor more than six members, to be known as the cemetery board, from among the citizens at large of such city, or from among the citizens at large from the county or counties in which the village is located for such village, who shall serve without pay and shall have entire control and management of any cemetery belonging to such city or village. Neither the mayor nor any member of the council nor the chairperson nor any member of the village board of trustees may be a member of the cemetery board. At the time of establishing such cemetery board, approximately one-third of the members shall be appointed for a term of one year, one-third for a term of two years, and one-third for a term of three years, and thereafter members shall be appointed for terms of three years. Vacancies in the membership of the board other than through the expiration of a term shall be filled for the unexpired portion of the term.

Source: Laws 1917, c. 207, § 1, p. 496; C.S.1922, § 4492; C.S.1929, § 13-401; R.S.1943, § 12-401; Laws 2008, LB995, § 1; Laws 2017, LB113, § 2; Laws 2017, LB463, § 1.

ARTICLE 5

CEMETERY ASSOCIATIONS

Section

12-501. Formation; trustees; election; notice; clerk; right to establish cemetery limited.

12-502. Formation; record of proceedings; certification; effect; certified transcript as evidence; duty of county clerk; fees.

Section

- 12-512.01. Perpetual care trust fund; trustees; duties.
- 12-512.02. Perpetual care trust fund; proceeds; investment.
- 12-512.04. Perpetual care trust fund; audit; exception; filing; expense.
- 12-512.05. Perpetual care and maintenance guarantee fund; establish; amount required.
- 12-516. Trustees; bond; terms; approval; filing; fee; cost paid by association.
- 12-518. Lots; plat; care, improvement, adornment; annual exhibit; powers and duties of association.
- 12-531. Abandoned or neglected pioneer cemetery; management and operation; cemetery association; duties; map; perpetual care trust fund; duties.
- 12-532. Mowing.

12-501 Formation; trustees; election; notice; clerk; right to establish cemetery limited.

(1) For purposes of sections 12-501 to 12-532, cemetery association means an association formed under such sections.

(2) Every cemetery, other than those owned, operated, and maintained by the state, by towns, villages, and cities, by churches, by public charitable corporations, by cemetery districts, and by fraternal and benevolent societies, shall be owned, conducted, and managed by cemetery associations organized and incorporated as provided in sections 12-501 to 12-532 except as specifically provided in sections 12-530 and 12-812.

(3) The establishment of a cemetery by any agency other than those enumerated in this section shall constitute a nuisance, and its operation may be enjoined at the suit of any taxpayer in the state.

(4) It shall be lawful for any number of persons, not less than five, who are residents of the county in which they desire to form themselves into an association, to form themselves into a cemetery association and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the association. All such elections shall take place at a meeting of four or more members of such association by a majority vote of those present. A notice for such meeting shall be published in a local newspaper, or posted in three places within the precinct or township in which the cemetery is or will be located, at least fifteen days prior to the meeting.

Source: R.S.1866, c. 25, § 45, p. 205; Laws 1905, c. 38, § 1, p. 274; R.S.1913, § 679; C.S.1922, § 588; C.S.1929, § 13-501; Laws 1935, c. 27, § 1, p. 121; C.S.Supp.,1941, § 13-501; R.S.1943, § 12-501; Laws 2014, LB863, § 3.

12-502 Formation; record of proceedings; certification; effect; certified transcript as evidence; duty of county clerk; fees.

The clerk of the cemetery association shall make out a true record of the proceedings of the meeting provided for by section 12-501 and certify and deliver the same to the clerk of the county in which such meeting is held, together with the name by which such association shall be known. The county clerk, immediately upon the receipt of such certified statement, shall record the same in a book provided by the county clerk for that purpose at the expense of the county and shall be entitled to the same fees for the services as the county clerk is entitled to demand for other similar services. After the making of such record by the county clerk, the trustees and the associated members and

successors shall be invested with the powers, privileges, and immunities incident to aggregate corporations. A certified transcript of the record made by the county clerk shall be deemed and taken in all courts and places whatsoever within this state as prima facie evidence of the existence of such cemetery association.

Source: R.S.1866, c. 25, § 46, p. 205; R.S.1913, § 680; C.S.1922, § 589; C.S.1929, § 13-502; R.S.1943, § 12-502; Laws 2014, LB863, § 4.

12-512.01 Perpetual care trust fund; trustees; duties.

Every cemetery association shall provide for and select trustees, other than officers or members of the association, who shall be selected, as provided for in section 12-512.03, to invest, safeguard, and look after certain funds of the association, including the sums provided for by section 12-512.02 and any other money acquired for the purposes of such fund, in a perpetual care trust fund, the income therefrom to be used for the perpetual care of the cemetery by the association.

Source: Laws 1953, c. 20, § 1, p. 89; Laws 2014, LB863, § 5.

12-512.02 Perpetual care trust fund; proceeds; investment.

The cemetery association shall place at least one hundred dollars for each cemetery lot sold into the perpetual care trust fund. Such funds shall be paid by the cemetery association to the trustees of the perpetual care trust fund, who shall invest the funds under the same conditions and restrictions as trust funds are invested under section 30-3201. If any lots are sold on contract, thirty percent of all payments received on the contract shall be paid to the trustee or trustees of the perpetual care trust fund until the entire payments required by this section are made.

Source: Laws 1953, c. 20, § 2, p. 89; Laws 1955, c. 18, § 1, p. 91; Laws 2014, LB863, § 6.

12-512.04 Perpetual care trust fund; audit; exception; filing; expense.

On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund shall have an audit of the perpetual care trust fund made by a certified public accountant except as otherwise provided in section 12-531. The report of such audit by the auditor shall be filed within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. The expense of the audit and the filing fee of the report shall be paid by the cemetery association.

Source: Laws 1953, c. 20, § 4, p. 90; Laws 2014, LB863, § 7.

12-512.05 Perpetual care and maintenance guarantee fund; establish; amount required.

Every cemetery association shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of not less than two thousand five hundred dollars in cash to be administered by the trustee or trustees of the perpetual care trust fund selected as provided in section 12-512.03.

Source: Laws 1955, c. 18, § 3, p. 92; Laws 1967, c. 39, § 1, p. 169; Laws 2014, LB863, § 8.

12-516 Trustees; bond; terms; approval; filing; fee; cost paid by association.

If the trustees of any cemetery association receive the gift of any property, real or personal, in their own name, in trust, for the perpetual care of the cemetery, or anything connected therewith, the trustees shall, upon the enactment of bylaws to that effect by the association, give a bond to the association of at least one thousand dollars, conditioned for the faithful administration of the trust and care of the funds and property. The bond shall be filed with and approved by the county clerk of the county in which the association is located, and the clerk shall be paid the same fee for approving and filing the bond as fixed by law for approving and filing official bonds. The cost of the bond shall be paid by the cemetery association.

Source: Laws 1925, c. 138, § 1, p. 367; C.S.1929, § 13-505; Laws 1941, c. 18, § 1, p. 106; C.S.Supp.,1941, § 13-505; R.S.1943, § 12-516; Laws 1980, LB 909, § 3; Laws 2014, LB863, § 9.

12-518 Lots; plat; care, improvement, adornment; annual exhibit; powers and duties of association.

A cemetery association shall cause a plat of the cemetery grounds, and of the lots laid out in the cemetery, to be made and recorded, such lots to be numbered by regular consecutive numbers. It shall have power to enclose, improve, and adorn the grounds and avenues and erect buildings for the use of the association, to prescribe rules for the enclosing and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement, or adornment of a lot which it may deem improper. An annual exhibit shall be made of the affairs of the association.

Source: R.S.1866, c. 25, § 51, p. 207; R.S.1913, § 685; C.S.1922, § 594; C.S.1929, § 13-507; R.S.1943, § 12-518; Laws 2014, LB863, § 10.

12-531 Abandoned or neglected pioneer cemetery; management and operation; cemetery association; duties; map; perpetual care trust fund; duties.

(1) A cemetery association which takes over the management and operation of a cemetery pursuant to section 12-812 shall, within one year after taking over, prepare a map of the cemetery and make a good faith effort to identify the remains buried in the cemetery according to the headstones and the owner of all lots. The cemetery association shall file the map and identifying information and a record of all business conducted by the cemetery association in the prior calendar year with the county clerk at the time it files the audit, compilation, or statement of accounts under subsection (2) of this section.

(2)(a) On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund for a cemetery association described in subsection (1) of this section which has a balance of one hundred thousand dollars or more on such date shall have an audit of the perpetual care trust fund made by a certified public accountant. The report of such audit by the auditor shall be filed within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. The expense of the audit and the filing fee of the report shall be paid by the cemetery association.

(b) On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund for a cemetery association described in subsection (1) of this section which has a balance of more than ten

thousand dollars and less than one hundred thousand dollars on such date shall have a compilation of the perpetual care trust fund made by a certified public accountant. The report of such compilation by the certified public accountant shall be filed within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. The expense of the compilation and the filing fee of the report shall be paid by the cemetery association.

(c) On June 30 of each year, the individual trustees or corporate trustee, as the case may be, of a perpetual care trust fund for a cemetery association described in subsection (1) of this section which has a balance of ten thousand dollars or less on such date shall file a statement of accounts of the perpetual care trust fund within thirty days after June 30 of such year with the county clerk of the county in which the cemetery is located. There shall be no filing fee for filing the statement of accounts.

Source: Laws 2014, LB863, § 1.

12-532 Mowing.

Any cemetery association shall provide for at least one mowing annually of the cemetery it manages, and one of such mowings shall occur within two weeks prior to Memorial Day. Additional mowings shall be at the discretion of the cemetery association.

Source: Laws 2014, LB863, § 2.

ARTICLE 8

MAINTENANCE AND IMPROVEMENT OF CEMETERIES

Section

12-808. Abandoned or neglected pioneer cemetery, defined.

12-812. Abandoned or neglected pioneer cemetery; county transfer management; conditions.

12-808 Abandoned or neglected pioneer cemetery, defined.

For purposes of sections 12-807 to 12-810 and 12-812, an abandoned or neglected pioneer cemetery shall be defined according to the following criteria:

(1) Such cemetery was founded or the land upon which such cemetery is situated was given, granted, donated, sold, or deeded to the founders of the cemetery prior to January 1, 1900;

(2) Such cemetery contains the grave or graves of a person or persons who were homesteaders, immigrants from a foreign nation, prairie farmers, pioneers, sodbusters, first generation Nebraskans, or Civil War veterans; and

(3) Such cemetery has been generally abandoned or neglected for a period of at least five consecutive years.

Source: Laws 1975, LB 129, § 2; Laws 1996, LB 932, § 1; Laws 2008, LB995, § 6; Laws 2014, LB863, § 11.

12-812 Abandoned or neglected pioneer cemetery; county transfer management; conditions.

A county which is maintaining an abandoned or neglected pioneer cemetery may transfer the management of the cemetery to a cemetery association formed under sections 12-501 to 12-532 or to a cemetery district organized under sections 12-909 to 12-923 if:

(1) The county has been maintaining the cemetery pursuant to sections 12-807 to 12-810 for at least five years;

(2) The planning commission appointed pursuant to section 23-114.01, if any, reviews the proposed transfer; and

(3) The county board approves the transfer of the cemetery by resolution after a public hearing for which notice is provided to the public.

Source: Laws 2014, LB863, § 12.

**ARTICLE 11
BURIAL PRE-NEED SALES**

Section

12-1109. Rules and regulations.

12-1113. Trust funds; distributions; conditions; accumulation.

12-1114. Pre-need seller; trust funds; retain cost-of-living amount.

12-1109 Rules and regulations.

The director may adopt and promulgate rules and regulations necessary to carry out and enforce the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 9; Laws 2014, LB700, § 13.

12-1113 Trust funds; distributions; conditions; accumulation.

(1) After making the calculations required by section 12-1114, any amounts exceeding trust principal, except income earned in the current calendar year, may be distributed to the pre-need seller by the trustee at the pre-need seller's request.

(2) All remaining funds held in trust, including cost-of-living amounts retained as required by section 12-1114, shall be governed by the following:

(a) When the funds held in trust are for the purchase of a crypt or niche in a mausoleum, columbarium, or lawn crypt which is to be constructed or is being constructed, the trustee shall distribute the funds held in trust for such purpose to the pre-need seller as follows:

(i) Twenty-five percent of the funds held in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of the construction, that twenty-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(ii) Thirty-three and one-third percent of the funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that fifty percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(iii) Fifty percent of the funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need seller's contractor or person in charge of construction, that seventy-five percent of the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed; and

(iv) All funds remaining in trust shall be paid over to the pre-need seller upon written notification from the pre-need seller, verified in writing by the pre-need

seller's contractor or person in charge of construction, that the construction of the mausoleum, columbarium, or lawn crypt has been substantially completed;

(b) When the funds are held in trust by reason of a pre-need sale which is not included in subdivision (2)(a) of this section, the trustee shall pay over to the pre-need seller the funds held in trust upon receiving written notification from the pre-need seller that delivery of the merchandise has been completed or services have been performed for which the funds were placed in trust;

(c) Upon cancellation of a pre-need sale, unless the pre-need purchaser has designated the trust as irrevocable pursuant to section 12-1106, the pre-need seller shall give written notification to the trustee and the trustee shall, within ninety days, pay over to the pre-need purchaser an amount equal to the amount required to be held in trust by the pre-need seller for that pre-need purchaser after deducting any reasonable charges made by the trustee caused by the cancellation and then any balance remaining in the pre-need purchaser's trust account shall immediately be paid over to the pre-need seller;

(d) Upon cancellation of a pre-need sale in which the funds were designated by the pre-need purchaser as irrevocable pursuant to section 12-1106, the trustee shall immediately pay over to the pre-need seller any amounts otherwise excludable from trust under section 12-1104 if such amounts have not previously been retained by the pre-need seller. Thereafter, the amount required to be held in trust shall be computed by the trustee and the amount so computed shall be held by the trustee separate from the trust in an individual account in the name of the pre-need purchaser and such account shall:

(i) Be held until the death of the person for whom the pre-need sale was entered into, at which time all funds in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, shall, within ninety days, be paid to the pre-need purchaser or his or her estate; or

(ii) Be held until the trustee receives written notification from the pre-need purchaser to transfer all of the funds held in the individual account, less any reasonable charges made by the trustee which were caused by such cancellation, to another irrevocable trust established by another licensed pre-need seller as a result of a pre-need sale made by the second pre-need seller to the canceling pre-need purchaser. Such transfer shall take place within ninety days after such written notification is received by the original pre-need seller.

The balance remaining in such pre-need purchaser's trust account after transfer of the computed amount to the individual account shall be paid over to the pre-need seller;

(e) Upon default, the pre-need seller shall be entitled to retain in trust the funds held in trust attributable to the defaulted pre-need sale until notice of cancellation by the pre-need purchaser is received by the pre-need seller or until the death of the person for whom the pre-need sale was entered into, whichever occurs first. In the event of default, the death of the person for whom the pre-need sale was entered into, absent prior notification of cancellation, shall be construed as a cancellation of that pre-need sale;

(f) Receipt of the written notification by the trustee and distribution of the funds after receipt of such written notification shall relieve the trustee of any liability for failure to properly administer the funds held in trust. Failure of the trustee to obtain such written notification may subject the trustee to liability for

actual damages limited to the amount of the funds which the trustee erroneously distributed; and

(g) In the administration of the individual trust accounts or the trust accounts held under a master trust agreement, the trustee shall be permitted to pay all of the reasonable costs incurred in the administration of the trusts, including any state or federal income taxes payable by the trusts. The payment of all costs and expenses, including taxes, shall be paid from the trust income and shall be deducted prior to the distribution of such income as provided in subsection (1) of this section. In the event that the income is not sufficient to pay all of such costs, expenses, and taxes, the pre-need seller shall be responsible for such payment out of its own separate funds.

Source: Laws 1986, LB 643, § 13; Laws 2017, LB239, § 1.

12-1114 Pre-need seller; trust funds; retain cost-of-living amount.

(1) To offset increases in the cost of living as the same may affect the trust accounts, the pre-need seller shall compute each year the total amount of the trust principal of each trust account determined as of December 31 of the immediately preceding year, and then multiply such amount by the percentage increase in the National Consumer Price Index for such year. The amount so determined shall be the amount of the current year's income that is required to be retained in trust by the trustee. Such amount is then considered to be trust principal and shall be retained before any income may be distributed as provided in subsection (1) of section 12-1113.

(2) If there is insufficient income in any given year to fully fund the amount required to be retained pursuant to subsection (1) of this section:

(a) As much of the required amount as possible shall be retained;

(b) The shortage shall be recouped from the income in subsequent years before such income may be distributed as provided in subsection (1) of section 12-1113; and

(c) The calculation required under subsection (1) of this section for subsequent years shall be computed as though the full amount required to be retained for each year had been retained.

(3) If publication of the National Consumer Price Index is discontinued, the director shall select a comparable index for the purposes of determining such percentage increase in the cost of living and notify all licensed pre-need sellers of the index selected.

Source: Laws 1986, LB 643, § 14; Laws 2017, LB239, § 2.

ARTICLE 12

UNMARKED HUMAN BURIAL SITES

Section

12-1205. Person discovering remains or goods; duties; violation; penalty.

12-1208. Discovery of remains or goods; society; duties.

12-1205 Person discovering remains or goods; duties; violation; penalty.

(1) Any person who encounters or discovers human skeletal remains or burial goods associated with an unmarked human burial in or on the ground shall immediately cease any activity which may cause further disturbance of the

unmarked human burial and shall within forty-eight hours report the presence and location of such remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any person who knowingly fails to make such a report shall be guilty of a Class III misdemeanor.

(2) If human skeletal remains or burial goods associated with an unmarked human burial in or on the ground are discovered by any employee, contractor, or agent of the Department of Transportation in conjunction with highway construction, any construction in the area immediately adjacent to such remains or goods shall cease. The department or any of its employees, contractors, or agents shall within forty-eight hours of the discovery of the remains or goods report the presence and location of the remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any remains or goods may then be removed from the site following an examination by the appropriate agency in accordance with section 39-1363 and any applicable federal requirements. Following removal, the remains or goods shall be disposed of in accordance with the Unmarked Human Burial Sites and Skeletal Remains Protection Act. The construction project may continue once the remains or goods have been removed.

Source: Laws 1989, LB 340, § 5; Laws 2017, LB339, § 72.

12-1208 Discovery of remains or goods; society; duties.

(1) Upon notification pursuant to section 12-1206, the society shall promptly assist in examining the discovered material to attempt to determine its origin and identity.

(2) If the society finds that the discovered human skeletal remains or burial goods are of non-American-Indian origin with a known or unknown identity, it shall notify the county attorney of the finding. Upon receipt of the finding, the county attorney shall cause the remains and associated burial goods to be interred in consultation with the county coroner. Reburial shall be in accordance with the wishes and at the expense of any known persons in the order listed by section 30-2223 or, if no relatives are known, in an appropriate cemetery at the expense of the county in which the remains were discovered after a one-year scientific study period if such study period is considered necessary or desirable by the society. In no case shall any human skeletal remains that are reasonably identifiable as to familial or tribal origin be displayed by any entity which receives funding or official recognition from the state or any of its political subdivisions. In situations in which human skeletal remains or burial goods that are unidentifiable as to familial or tribal origin are clearly found to be of extremely important, irreplaceable, and intrinsic scientific value, the remains or goods may be curated by the society until the remains or goods may be reinterred as provided in this subsection without impairing their scientific value.

(3) If the society finds that the discovered human skeletal remains or burial goods are of American Indian origin, it shall promptly notify in writing the Commission on Indian Affairs and any known persons in the order listed in section 30-2223 or, if no relatives are known, any Indian tribes reasonably identified as tribally linked to such remains or goods in order to ascertain and follow the wishes of the relative or Indian tribe, if any, as to reburial or other disposition. Reburial by any such relative or Indian tribe shall be by and at the expense of such relative or Indian tribe. In cases in which reasonably identifi-

able American Indian human skeletal remains or burial goods are unclaimed by the appropriate relative or Indian tribe, the society shall notify all other Indian tribes which can reasonably be determined to have lived in Nebraska in order to ascertain and follow the wishes of the tribe as to reburial or other disposition. Reburial by any such tribe shall be by and at the expense of the tribe. If such remains or goods are unclaimed by the appropriate tribe, the remains or goods shall be reburied, as determined by the commission, by one of the four federally recognized Indian tribes in Nebraska.

Source: Laws 1989, LB 340, § 8; Laws 2001, LB 97, § 1; Laws 2007, LB463, § 1113; Laws 2014, LB998, § 1.

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. The balance in the Veteran Cemetery Construction Fund shall be transferred to the General Fund on or before June 30, 2018, as directed by the budget administrator of the budget division of the Department of Administrative Services.

(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; Laws 2017, LB331, § 18.

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.
 - (b) Ambulance Service. 13-303.
 - (d) Home-Delivered Meals. 13-308.
 - (i) Extraterritorial Jurisdiction. 13-327.
4. Political Subdivisions; Laws Applicable to All. 13-402, 13-404.
5. Budgets.
 - (a) Nebraska Budget Act. 13-503 to 13-513.
 - (d) Budget Limitations. 13-518 to 13-520.
6. Finances. 13-607, 13-608.
8. Interlocal Cooperation Act. 13-809.
9. Political Subdivisions Tort Claims Act. 13-910, 13-912.
12. Nebraska Public Transportation Act. 13-1203 to 13-1212.
19. Development Districts. 13-1905 to 13-1907.
21. Enterprise Zones. 13-2101.01 to 13-2114.
22. Local Government Miscellaneous Expenditures. 13-2203.
24. Retirement Benefits and Plans. 13-2402.
25. Joint Public Agency Act. 13-2507 to 13-2531.
26. Convention Center Facility Financing Assistance Act. 13-2603 to 13-2610.
27. Civic and Community Center Financing Act. 13-2701 to 13-2709.
28. Municipal Counties. 13-2809, 13-2816.
31. Sports Arena Facility Financing Assistance Act. 13-3102 to 13-3108.
32. Property Assessed Clean Energy Act. 13-3201 to 13-3211.

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 year 2016-17, the total amount of tax credit granted under this section shall be reduced by seventy-five thousand dollars.

Source: Laws 1984, LB 372, § 8; Laws 2005, LB 334, § 5; Laws 2011, LB345, § 9; Laws 2014, LB1114, § 1; Laws 2016, LB1083, § 7.

ARTICLE 3

POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS

(b) AMBULANCE SERVICE

Section

13-303. Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

Section

(d) HOME-DELIVERED MEALS

13-308. Municipal corporations; powers.

(i) EXTRATERRITORIAL JURISDICTION

13-327. County; cede jurisdiction; when; procedure.

(b) AMBULANCE SERVICE

13-303 Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.

The county boards of counties and the governing bodies of cities and villages may establish an emergency medical service, including the provision of scheduled and unscheduled ambulance service, as a governmental service either within or without the county or municipality, as the case may be. The county board or governing body may contract with any city, person, firm, or corporation licensed as an emergency medical service for emergency medical care by out-of-hospital emergency care providers. Each may enter into an agreement with the other under the Interlocal Cooperation Act or Joint Public Agency Act for the purpose of establishing an emergency medical service or may provide a separate service for itself. Public funds may be expended therefor, and a reasonable service fee may be charged to the user. Before any such service is established under the authority of this section, the county board or the governing bodies of cities and villages shall hold a public hearing after giving at least ten days' notice thereof, which notice shall include a brief summary of the general plan for establishing such service, including an estimate of the initial cost and the possible continuing cost of operating such service. If the board or governing body after such hearing determines that an emergency medical service for emergency medical care by out-of-hospital emergency care providers is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds or may levy a tax for the purpose of providing the service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute, except that when a rural or suburban fire protection district provides the service, the county shall pay the cost for the county service by levying a tax on that property not in the rural or suburban fire protection district providing the service. The levy shall be subject to subsection (10) of section 77-3442 or section 77-3443, as applicable.

Source: Laws 1967, c. 111, § 1, p. 359; Laws 1973, LB 239, § 1; Laws 1978, LB 560, § 2; R.S.1943, (1983), § 23-378; Laws 1996, LB 1114, § 25; Laws 1997, LB 138, § 31; Laws 1999, LB 87, § 51; Laws 2001, LB 808, § 1; Laws 2015, LB325, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

(d) HOME-DELIVERED MEALS

13-308 Municipal corporations; powers.

Any municipal corporation may contract with any person and provide funds for home-delivered meals for the elderly and senior volunteer programs.

Source: Laws 1975, LB 307, § 1; R.S.1943, (1983), § 18-1730; Laws 2017, LB417, § 1.

(i) EXTRATERRITORIAL JURISDICTION

13-327 County; cede jurisdiction; when; procedure.

(1) The governing body of any city of the first or second class or village may, by majority vote of its members, request that the county board formally cede and transfer to the city or village extraterritorial zoning jurisdiction over land outside the area extending two miles from the corporate boundaries of a city of the first class and one mile from the corporate boundaries of a city of the second class or village. In making its request, the city or village shall describe the territory over which jurisdiction is being sought by metes and bounds or by reference to an official map, except that a village shall not request jurisdiction over any territory that is more than one-quarter mile outside the area extending one mile from the corporate boundaries of a village.

(2) Unless prohibited pursuant to section 13-328, the county board may, by majority vote of its members, grant the request with regard to some or all of the requested territory if:

(a) The county has formally adopted a comprehensive development plan and zoning resolution pursuant to section 23-114 not less than two years immediately preceding the date of the city's or village's request;

(b) The city or village, on the date of the request, is exercising extraterritorial zoning jurisdiction over territory within the boundaries of the county;

(c) The requested territory is within the projected growth pattern of the city or village and would be within the city's or village's extraterritorial zoning jurisdiction by reason of annexation within a reasonable period of years;

(d) Not more than a total of twenty-five percent of the territory of the county located outside the corporate boundaries of any city or village within the county shall be ceded to the jurisdiction of one city or village within ten years after the date upon which the initial request for the cession of territory to the city or village was approved by the governing body of the city or village; and

(e) No portion of the territory ceded to the city's or village's jurisdiction by the county lies within an area extending one-half mile from the extraterritorial zoning jurisdiction of any other city of the first or second class or village on the date the request is approved by the governing body of the city or village unless such other city or village adopts a resolution in support of such request.

(3) If the county board approves the cession and transfer of extraterritorial zoning jurisdiction to a city or village pursuant to this section, such transfer shall take effect on the effective date of the ordinance as provided for in subsection (4) of section 16-902 in the case of a city of the first class or as provided for in subsection (5) of section 17-1002 in the case of a city of the second class or village. Upon the effective date of such transfer, the transferred jurisdiction shall be treated for all purposes as if such land were located within

two miles of the corporate boundaries of a city of the first class or within one mile of the corporate boundaries of a city of the second class or village.

Source: Laws 2002, LB 729, § 1; Laws 2012, LB1126, § 1; Laws 2016, LB864, § 1.

ARTICLE 4

POLITICAL SUBDIVISIONS; LAWS APPLICABLE TO ALL

Section

13-402. Political subdivisions, state agency; authorized to file petition in United States Bankruptcy Court; limitation; governing body; duties.

13-404. Civil offices; vacancy; how filled.

13-402 Political subdivisions, state agency; authorized to file petition in United States Bankruptcy Court; limitation; governing body; duties.

(1) Any county, city, village, school district, agency of the state government, drainage district, sanitary and improvement district, or other political subdivision of the State of Nebraska is hereby permitted, authorized, and given the power to file a petition in the United States Bankruptcy Court under 11 U.S.C. chapter 9 and any acts amendatory thereto and supplementary thereof and to incur and pay the expenses incident to the consummation of a plan of adjustment of debts as contemplated by such petition.

(2)(a) The authority and power to file a petition provided for in subsection (1) of this section shall not apply to any city or village that, at the time of its governing body authorizing the filing of such petition, has its defined benefit retirement plan, if any, with a funded ratio of the actuarial value of assets less than fifty-one and sixty-five hundredths percent for any such petition to be filed during the period between January 1, 2020, and January 1, 2023; fifty-four and forty-one hundredths percent for any such petition to be filed during the period between January 1, 2023, and January 1, 2026; fifty-eight and twenty-one hundredths percent for any such petition to be filed during the period between January 1, 2026, and January 1, 2029; sixty-three and forty-one hundredths percent for any such petition to be filed during the period between January 1, 2029, and January 1, 2032; seventy and seventy-one hundredths percent for any such petition to be filed during the period between January 1, 2032, and January 1, 2035; eighty and sixty-one hundredths percent for any such petition to be filed during the period between January 1, 2035, and January 1, 2038; and ninety percent thereafter.

(b) Within ninety days prior to taking action authorizing the filing of such petition, the governing body of any city or village that has a defined benefit retirement plan shall conduct an actuarial valuation to determine the funded ratio of such defined benefit retirement plan. Such determination shall be prima facie evidence in establishing the authority of the city or village to exercise authority under this section.

(c)(i) A city or village that does not have a defined benefit retirement plan may by ordinance declare and affirm that its general obligation bonds, whether existing before, after, or at the time of such ordinance, shall, unless otherwise provided in the related authorizing measure, be equally and ratably secured by a statutory lien on all ad valorem taxes levied and to be levied from year to year by such city or village and on all proceeds derived therefrom. The statutory lien authorized hereunder shall be deemed to attach and be continuously perfected

from the time the bonds are issued without further action or authorization by the city or village. The statutory lien is valid and binding from the time the bonds are issued without any physical delivery thereof or further act required. No filing need be made under the Uniform Commercial Code or otherwise to perfect the statutory lien on any ad valorem taxes or proceeds derived therefrom in favor of any general obligation bonds. Bonds so secured shall have a first priority lien on such ad valorem taxes so levied and on all proceeds derived therefrom and shall have priority against all parties having claims of contract or tort or otherwise against the city or village, whether or not the parties have notice thereof. The absence of such declaration or affirmation shall not reduce or degrade the priority or secured status of such bonds otherwise existing under law.

(ii) For purposes of this subdivision, statutory lien shall have the meaning given to that term under 11 U.S.C. 101(53) of the federal Bankruptcy Reform Act of 1994, as it existed on August 24, 2017.

(d) An actuary performing actuarial valuations pursuant to this subsection shall be a member of the American Academy of Actuaries and shall meet the academy's qualification standards to render a statement of actuarial opinion.

Source: Laws 1981, LB 327, § 2; R.S.1943, (1986), § 77-2419; Laws 1989, LB 14, § 1; Laws 2017, LB72, § 1.

13-404 Civil offices; vacancy; how filled.

Every civil office in a political subdivision filled by appointment shall be vacant upon the happening of any one of the events listed in section 32-560 except as provided in section 32-561. The resignation of the incumbent of such a civil office may be made as provided in section 32-562. Vacancies in such a civil office shall be filled as provided in sections 32-567 and 32-574 and shall be subject to section 32-563.

Source: Laws 1994, LB 76, § 468; Laws 2015, LB575, § 2.

ARTICLE 5 BUDGETS

(a) NEBRASKA BUDGET ACT

Section	
13-503.	Terms, defined.
13-504.	Proposed budget statement; contents; corrections; cash reserve; limitation.
13-505.	Proposed budget statement; estimated expenditures; unencumbered balances; estimated income.
13-506.	Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.
13-508.	Adopted budget statement; certified taxable valuation; levy.
13-509.	County assessor; certify taxable value; when.
13-509.01.	Cash balance; expenditure authorized; limitation.
13-511.	Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.
13-513.	Auditor; request information; late fee; failure to provide information; auditor powers.

(d) BUDGET LIMITATIONS

13-518.	Terms, defined.
13-519.	Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.
13-520.	Limitations; not applicable to certain restricted funds.

(a) NEBRASKA BUDGET ACT

13-503 Terms, defined.

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

(1) Governing body means the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board means any governing body which has the power or duty to levy a tax;

(3) Fiscal year means the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax means any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor means the Auditor of Public Accounts;

(6) Cash reserve means funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds means all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement means a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund means any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;

(10) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by a city, village, or natural resources district in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget means (a) a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs, (b) a budget by a city of the first or second class or village that provides for a biennial period to determine and carry on the city's or village's financial and taxing affairs, or (c) a budget by a natural resources district that provides for a biennial period to determine and carry on the natural resources district's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1; Laws 2009, LB392, § 2; Laws 2010, LB779, § 1; Laws 2013, LB111, § 1; Laws 2015, LB164, § 2.

Cross References

Joint Airport Authorities Act, see section 3-716.

Local Option Municipal Economic Development Act, see section 18-2701.

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

Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-504 Proposed budget statement; contents; corrections; cash reserve; limitation.

(1) Each governing body shall annually or biennially, as the case may be, prepare a proposed budget statement on forms prescribed and furnished by the auditor. The proposed budget statement shall be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement pursuant to section 13-506. A proposed budget statement shall contain the following information, except as provided by state law:

(a) For the immediately preceding fiscal year or biennial period, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each such source: The unencumbered cash balance at the beginning and end of the year or biennial period; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(b) For the current fiscal year or biennial period, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: The actual unencumbered cash balance available at the beginning of the year or biennial period; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. Such statement shall contain the cash reserve for each fiscal year or biennial period and shall note whether or not such reserve is encumbered. Such cash reserve projections shall

be based upon the actual experience of prior years or biennial periods. The cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(c) For the immediately ensuing fiscal year or biennial period, an estimate of revenue from all sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year or biennial period; the amounts proposed to be expended during the year or biennial period; and the amount of cash reserve, based on actual experience of prior years or biennial periods, which cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(d) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property (i) for the purpose of paying the principal or interest on bonds issued by the governing body and (ii) for all other purposes;

(e) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the governing body;

(f) For municipalities, a list of the proprietary functions which are not included in the budget statement. Such proprietary functions shall have a separate budget statement which is approved by the city council or village board as provided in the Municipal Proprietary Function Act; and

(g) For school districts and educational service units, a separate identification and description of all current and future costs to the school district or educational service unit which are reasonably anticipated as a result of any contract, and any adopted amendments thereto, for superintendent services to be rendered to such school district or administrator services to be rendered to such educational service unit.

(2) The actual or estimated unencumbered cash balance required to be included in the budget statement by this section shall include deposits and investments of the political subdivision as well as any funds held by the county treasurer for the political subdivision and shall be accurately stated on the proposed budget statement.

(3) The political subdivision shall correct any material errors in the budget statement detected by the auditor or by other sources.

Source: Laws 1969, c. 145, § 3, p. 670; Laws 1971, LB 129, § 1; Laws 1984, LB 932, § 3; Laws 1986, LB 889, § 2; Laws 1987, LB 183, § 3; R.S.Supp.,1987, § 23-923; Laws 1989, LB 33, § 6; Laws 1993, LB 310, § 3; Laws 1993, LB 734, § 18; Laws 1994, LB 1310, § 1; Laws 1995, LB 490, § 22; Laws 1996, LB 1362, § 1; Laws 1997, LB 271, § 9; Laws 1999, LB 86, § 3; Laws 2000, LB 968, § 5; Laws 2002, LB 568, § 1; Laws 2013, LB111, § 2; Laws 2014, LB470, § 1; Laws 2015, LB164, § 3.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

13-505 Proposed budget statement; estimated expenditures; unencumbered balances; estimated income.

The estimated expenditures plus the required cash reserve for the ensuing fiscal year or biennial period less all estimated and actual unencumbered balances at the beginning of the year or biennial period and less the estimated income from all sources, including motor vehicle taxes, other than taxation of personal and real property shall equal the amount to be received from taxes, and such amount shall be shown on the proposed budget statement pursuant to section 13-504. The amount to be raised from taxation of personal and real property, as determined above, plus the estimated revenue from other sources, including motor vehicle taxes, and the unencumbered balances shall equal the estimated expenditures, plus the necessary required cash reserve, for the ensuing year or biennial period.

Source: Laws 1969, c. 145, § 4, p. 671; R.S.1943, (1983), § 23-924; Laws 1993, LB 310, § 4; Laws 1997, LB 271, § 10; Laws 2002, LB 568, § 2; Laws 2013, LB111, § 3.

13-506 Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.

(1) Each governing body shall each year or biennial period conduct a public hearing on its proposed budget statement. Notice of place and time of such hearing, together with a summary of the proposed budget statement, shall be published at least four calendar days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. For purposes of such notice, the four calendar days shall include the day of publication but not the day of hearing. When the total operating budget, not including reserves, does not exceed ten thousand dollars per year or twenty thousand dollars per biennial period, the proposed budget summary may be posted at the governing body's principal headquarters. After such hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such hearing. The amount to be received from personal and real property taxation shall be certified to the levying board after the proposed budget statement is adopted or is amended and adopted as amended. If the levying board represents more than one county, a member or a representative of the governing board shall, upon the written request of any represented county, appear and present its budget at the hearing of the requesting county. The certification of the amount to be received from personal and real property taxation shall specify separately (a) the amount to be applied to the payment of principal or interest on bonds issued by the governing body and (b) the amount to be received for all other purposes. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty calendar days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.

(2) Upon approval by the governing body, the budget shall be filed with the auditor. The auditor may review the budget for errors in mathematics, improper accounting, and noncompliance with the Nebraska Budget Act or sections 13-518 to 13-522. If the auditor detects such errors, he or she shall immediately notify the governing body of such errors. The governing body shall correct any

such error as provided in section 13-511. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for which the auditor has notified the governing body.

Source: Laws 1969, c. 145, § 5, p. 672; Laws 1971, LB 129, § 2; Laws 1973, LB 95, § 1; R.S.1943, (1983), § 23-925; Laws 1993, LB 310, § 5; Laws 1996, LB 1362, § 2; Laws 1997, LB 271, § 11; Laws 1999, LB 86, § 4; Laws 2002, LB 568, § 3; Laws 2013, LB111, § 4; Laws 2017, LB151, § 1.

13-508 Adopted budget statement; certified taxable valuation; levy.

(1) After publication and hearing thereon and within the time prescribed by law, each governing body shall file with and certify to the levying board or boards on or before September 20 of each year or September 20 of the final year of a biennial period and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. For fiscal years prior to fiscal year 2017-18, learning communities shall also file a copy of such adopted budget statement with member school districts on or before September 1 of each year. If the prime rate published by the Federal Reserve Board is ten percent or more at the time of the filing and certification required under this subsection, the governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year or biennial period and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year or biennial period which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

(2) Each governing body shall use the certified taxable values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1; Laws 2009, LB166, § 1; Laws 2013, LB111, § 5;

Laws 2016, LB1067, § 2; Laws 2017, LB432, § 1; Laws 2018, LB377, § 1.

Operative date January 1, 2019.

13-509 County assessor; certify taxable value; when.

(1) On or before August 20 of each year, the county assessor shall certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy. The certification shall be provided to the governing body or board (a) by mail if requested by the governing body or board, (b) electronically, or (c) by listing such certification on the county assessor's web site.

(2) Current taxable value for real property shall mean the value established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission. Current taxable value for tangible personal property shall mean the net book value reported by the taxpayer and certified by the county assessor.

(3) The valuation of any real and personal property annexed by a political subdivision on or after August 1 shall be considered in the taxable valuation of the annexing political subdivision the following year.

Source: Laws 1977, LB 391, § 3; Laws 1979, LB 187, § 256; Laws 1984, LB 835, § 1; R.S.Supp., 1986, § 23-927.01; Laws 1991, LB 829, § 1; Laws 1992, LB 1063, § 5; Laws 1992, Second Spec. Sess., LB 1, § 5; Laws 1993, LB 734, § 20; Laws 1994, LB 902, § 12; Laws 1995, LB 452, § 3; Laws 1997, LB 271, § 12; Laws 1997, LB 397, § 2; Laws 1998, LB 306, § 3; Laws 1999, LB 194, § 1; Laws 1999, LB 813, § 1; Laws 2005, LB 261, § 1; Laws 2009, LB166, § 2; Laws 2010, LB1071, § 1; Laws 2017, LB217, § 2.

13-509.01 Cash balance; expenditure authorized; limitation.

On and after the first day of its fiscal year in 1993 and of each succeeding year or on or after the first day of its biennial period and until the adoption of the budget by a governing body in September, the governing body may expend any balance of cash on hand for the current expenses of the political subdivision governed by the governing body. Except as provided in section 13-509.02, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year or biennial period. Such expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted.

Source: Laws 1993, LB 734, § 21; Laws 1994, LB 1257, § 4; Laws 2013, LB111, § 6.

13-511 Revision of adopted budget statement; when; supplemental funds; hearing; notice; warrants; issuance; correction.

(1) Unless otherwise provided by law, whenever during the current fiscal year or biennial period it becomes apparent to a governing body that (a) there are circumstances which could not reasonably have been anticipated at the time the budget for the current year or biennial period was adopted, (b) the budget adopted violated sections 13-518 to 13-522, such that the revenue of the current fiscal year or biennial period for any fund thereof will be insufficient, additional

expenses will be necessarily incurred, or there is a need to reduce the budget requirements to comply with sections 13-518 to 13-522, or (c) the governing body has been notified by the auditor of a mathematical or accounting error or noncompliance with the Nebraska Budget Act, such governing body may propose to revise the previously adopted budget statement and shall conduct a public hearing on such proposal. The public hearing requirement shall not apply to emergency expenditures pursuant to section 81-829.51.

(2) Notice of the time and place of the hearing shall be published at least four calendar days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. For purposes of such notice, the four calendar days shall include the day of publication but not the day of hearing. Such published notice shall set forth (a) the time and place of the hearing, (b) the amount in dollars of additional or reduced money required and for what purpose, (c) a statement setting forth the nature of the unanticipated circumstances and, if the budget requirements are to be increased, the reasons why the previously adopted budget of expenditures cannot be reduced during the remainder of the current year or biennial period to meet the need for additional money in that manner, (d) a copy of the summary of the originally adopted budget previously published, and (e) a copy of the summary of the proposed revised budget.

(3) At such hearing any taxpayer may appear or file a written statement protesting any application for additional money. A written record shall be kept of all such hearings.

(4) Upon conclusion of the public hearing on the proposed revised budget and approval of the proposed revised budget by the governing body, the governing body shall file with the county clerk of the county or counties in which such governing body is located, with the learning community coordinating council for fiscal years prior to fiscal year 2017-18 for school districts that are members of learning communities, and with the auditor, a copy of the revised budget, as adopted. The governing body may then issue warrants in payment for expenditures authorized by the adopted revised budget. Such warrants shall be referred to as registered warrants and shall be repaid during the next fiscal year or biennial period from funds derived from taxes levied therefor.

(5) Within thirty calendar days after the adoption of the budget under section 13-506, a governing body may, or within thirty calendar days after notification of an error by the auditor, a governing body shall, correct an adopted budget which contains a clerical, mathematical, or accounting error which does not affect the total amount budgeted by more than one percent or increase the amount required from property taxes. No public hearing shall be required for such a correction. After correction, the governing body shall file a copy of the corrected budget with the county clerk of the county or counties in which such governing body is located and with the auditor. The governing body may then issue warrants in payment for expenditures authorized by the budget.

Source: Laws 1969, c. 145, § 9, p. 673; R.S.1943, (1983), § 23-929; Laws 1993, LB 734, § 22; Laws 1996, LB 299, § 12; Laws 1999, LB 86, § 6; Laws 2000, LB 1116, § 8; Laws 2001, LB 797, § 2; Laws 2002, LB 568, § 5; Laws 2006, LB 1024, § 3; Laws 2015, LB283, § 1; Laws 2016, LB1067, § 3; Laws 2017, LB151, § 2.

13-513 Auditor; request information; late fee; failure to provide information; auditor powers.

(1) The auditor shall, on or before August 1 each year, request information from each governing body in a form prescribed by the auditor regarding (a) trade names, corporate names, or other business names under which the governing body operates and (b) agreements to which the governing body is a party under the Interlocal Cooperation Act and the Joint Public Agency Act. Each governing body shall provide such information to the auditor on or before September 20.

(2) Information requested pursuant to this section that is not received by the auditor on or before September 20 shall be delinquent. The auditor shall notify the political subdivision by facsimile transmission, email, or first-class mail of such delinquency. Beginning on the day that such notification is sent, the auditor may assess the political subdivision a late fee of twenty dollars per day for each calendar day the requested information remains delinquent. The total late fee assessed to a political subdivision under this section shall not exceed two thousand dollars per delinquency.

(3) The auditor shall remit to the State Treasurer for credit to the Auditor of Public Accounts Cash Fund a remedial fee sufficient to reimburse the direct costs of administering and enforcing this section, but such remedial fee shall not exceed one hundred dollars from any late fee received under this section. The auditor shall remit any late fee amount in excess of one hundred dollars received under this section to the State Treasurer to be distributed in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) If a political subdivision fails to provide the information requested under this section on or before September 20, the auditor may, at his or her discretion, audit such political subdivision. The expense of such audit shall be paid by the political subdivision.

Source: Laws 2004, LB 939, § 2; Laws 2013, LB192, § 1; Laws 2017, LB151, § 3.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

(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, 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;

(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 renewable 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 and reimbursement provided pursuant to section 77-1239;

(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 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 2010-11, 2011-12, and 2012-13, state aid to community colleges paid pursuant to section 90-517 and (ii) for fiscal year 2013-14 and each fiscal year thereafter, state aid to community colleges paid pursuant to the Community College Aid Act;

(e) For educational service units, state aid appropriated under sections 79-1241.01 and 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; Laws 2012, LB946, § 8; Laws 2015, LB259, § 4; Laws 2015, LB424, § 1; Laws 2017, LB382, § 1.

Cross References

Community College Aid Act, see section 85-2231.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.

(1)(a) Subject to subdivisions (1)(b) and (c) of this section, for all fiscal years beginning on or after July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year's total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation established under section 77-3446. For the second fiscal year in which a county will receive a full year of receipts from the tax imposed in sections 77-27,223 to 77-27,227, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total receipts from the tax imposed in sections 77-27,223 to 77-27,227 in the prior year. If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

(b) For all fiscal years beginning on or after July 1, 2008, educational service units may exceed the limitations of subdivision (1)(a) of this section to the extent that one hundred ten percent of the needs for the educational service unit calculated pursuant to section 79-1241.03 exceeds the budgeted restricted funds allowed pursuant to subdivision (1)(a) of this section.

(c) For fiscal year 2017-18, the last prior year's total of restricted funds for counties shall be the last prior year's total of restricted funds less the last prior year's restricted funds budgeted by counties under sections 39-2501 to 39-2520, plus the last prior year's amount of restricted funds budgeted by counties under sections 39-2501 to 39-2520 to be used for capital improvements.

(2) A governmental unit may exceed the limit provided in subdivision (1)(a) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

(3) A governmental unit may exceed the applicable allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon the receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit. The recommendation of the governing body or the petition of the legal voters shall include the amount and percentage by which the governing body would increase its budgeted restricted funds for the ensuing year over and above the current year's budgeted restricted funds. The county clerk or election commissioner shall call for a special election on the issue within thirty days after the

receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1; Laws 2008, LB1154, § 2; Laws 2009, LB121, § 1; Laws 2009, LB501, § 1; Laws 2010, LB1072, § 2; Laws 2015, LB261, § 1; Laws 2017, LB382, § 2.

Cross References

Election Act, see section 32-101.

13-520 Limitations; not applicable to certain restricted funds.

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Division of Aeronautics of the Department of Transportation in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, or (7) the dollar amount by which restricted funds budgeted by a natural resources district 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 imple-

ment ground water management activities and integrated management activities for FY2003-04.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4; Laws 2009, LB121, § 2; Laws 2015, LB261, § 2; Laws 2017, LB339, § 73.

Cross References

Emergency Management Act, see section 81-829.36.

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

**ARTICLE 6
FINANCES**

Section

13-607. Repealed. Laws 2016, LB843, § 9.

13-608. Repealed. Laws 2016, LB843, § 9.

13-607 Repealed. Laws 2016, LB843, § 9.

13-608 Repealed. Laws 2016, LB843, § 9.

**ARTICLE 8
INTERLOCAL COOPERATION ACT**

Section

13-809. Joint entity; issuance of bonds; amounts; use.

13-809 Joint entity; issuance of bonds; amounts; use.

Any joint entity may from time to time issue its bonds in such principal amounts as its governing body shall deem necessary to provide sufficient funds to carry out any of the joint entity's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the governing body may determine, and the payment of all other costs or expenses of the joint entity incident to and necessary or convenient to carry out its purposes and powers. Bonds issued on or after April 18, 2018, for purposes of the Public Facilities Construction and Finance Act shall be subject to a vote prior to issuance as provided in the act.

Source: Laws 1991, LB 731, § 9; Laws 2018, LB1000, § 1.
Effective date April 18, 2018.

Cross References

Public Facilities Construction and Finance Act, see section 72-2301.

**ARTICLE 9
POLITICAL SUBDIVISIONS TORT CLAIMS ACT**

Section

13-910. Act and sections; exemptions.

13-912. Defective bridge or highway; damages; liability; limitation.

13-910 Act and sections; exemptions.

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 except when such title is issued upon an application filed electronically by an approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507;

(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 subdivi-

sion 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 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; Laws 2017, LB263, § 1.

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.

13-912 Defective bridge or highway; damages; liability; limitation.

If any person suffers personal injury or loss of life, or damage to his or her property by means of insufficiency or want of repair of a highway or bridge or other public thoroughfare, which a political subdivision is liable to keep in repair, the person sustaining the loss or damage, or his or her personal representative, may recover in an action against the political subdivision, and if damages accrue in consequence of the insufficiency or want of repair of a road or bridge or other public thoroughfare, erected and maintained by two or more political subdivisions, the action can be brought against all of the political subdivisions liable for the repairs of the same; and damages and costs shall be paid by the political subdivisions in proportion as they are liable for the repairs. The procedure for filing such claims and bringing suit shall be the same for claims under this section as for other claims under the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610. No political subdivision shall be liable for damages occasioned by defects in state highways and bridges thereon which the Department of Transportation is required to maintain, but the political subdivision shall not be relieved of liability until the state has actually undertaken construction or maintenance of such highways. It is the intent of the Legislature that minimum maintenance highways and roads shall not be deemed to be insufficient or in want of repair when they meet the minimum standards for such highways and roads pursuant to section 39-2109.

Source: Laws 1889, c. 7, § 4, p. 78; R.S.1913, § 2995; C.S.1922, § 2746; Laws 1929, c. 171, § 1, p. 585; C.S.1929, § 39-832; R.S.1943, § 39-834; Laws 1959, c. 167, § 2, p. 609; R.R.S.1943, § 39-834; Laws 1969, c. 138, § 10, p. 630; Laws 1983, LB 10, § 1; R.S. 1943, (1983), § 23-2410; Laws 1996, LB 900, § 1026; Laws 2017, LB339, § 74.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section
13-1203. Terms, defined.

Section

- 13-1205. Department; powers, duties, and responsibilities; enumerated.
- 13-1209. Assistance program; established; state financial assistance; limitation.
- 13-1210. Assistance program; department; certify funding; report.
- 13-1212. Department; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.

13-1203 Terms, defined.

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

(1) Public transportation shall mean the transport of passengers on a regular and continuing basis by motor carrier for hire, whether over regular or irregular routes, over any public road in this state, including city bus systems, intercity bus systems, special public transportation systems to include portal-to-portal escorted service for the elderly or handicapped, taxi, subscription, dial-a-ride, or other demand-responsive systems, and those motor carriers for hire which may carry elderly or handicapped individuals for a set fare, a donation, or at no cost to such individuals. Public transportation shall not include motor carriers for hire when engaged in the transportation of school children and teachers to and from school and school-related activities and shall not include private car pools;

(2) Department shall mean the Department of Transportation;

(3) Director shall mean the Director-State Engineer;

(4) Elderly shall mean any person sixty-two years of age or older who is drawing social security and every person sixty-five years of age and older;

(5) Handicapped shall mean any individual who is unable without special facilities or special planning or design to utilize public transportation facilities and services;

(6) Municipality shall mean any village or incorporated city, except cities of the metropolitan class operating under home rule charter;

(7) Qualified public-purpose organization shall mean an incorporated private not-for-profit group or agency which:

(a) Has operated or proposes to operate only motor vehicles having a seating capacity of twenty or less for the transportation of passengers in the state;

(b) Has been approved as capable of providing public transportation services by the appropriate city or county governing body; and

(c) Operates or proposes to operate a public transportation service in an area which the department has identified as not being adequately served by existing public or private transportation services pursuant to section 13-1205; and

(8) Intercity bus system shall mean a system of regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more communities or areas not in close proximity which support public transportation service. At least one terminus of the intercity bus system shall be in an area that makes meaningful connections with intercity service to more distant points.

Source: Laws 1975, LB 443, § 7; Laws 1977, LB 374, § 1; Laws 1981, LB 144, § 2; R.S.1943, (1983), § 19-3903; Laws 1993, LB 158, § 2; Laws 2017, LB339, § 75.

13-1205 Department; powers, duties, and responsibilities; enumerated.

The department shall have the following powers, duties, and responsibilities:

(1) To collect and maintain data on the level of public transportation services and needs in the state and identify areas not being adequately served by existing public or private transportation services;

(2) To assess the regional and statewide effect of changes, improvement, and route abandonments in the state's public transportation system;

(3) To develop a six-year statewide transit plan and programs for public transportation in coordination with local plans and programs developed by municipalities, counties, and transit authorities;

(4) To provide planning and technical assistance to agencies of the state, political subdivisions, or groups seeking to improve public transportation;

(5) To advise, consult, and cooperate with agencies of the state, the federal government, and other states, interstate agencies, political subdivisions, and groups concerned with public transportation;

(6) To cooperate with the Public Service Commission by providing periodic assessments to the commission when determining the effect of proposed regulatory decisions on public transportation;

(7) To administer federal and state programs providing financial assistance to public transportation, except those federal and state programs in which a municipality, county, transit authority, or other state agency is designated as the administrator; and

(8) To exercise all other powers necessary and proper for the discharge of its duties, including the adoption and promulgation of reasonable rules and regulations to carry out the act.

Source: Laws 1975, LB 443, § 9; Laws 1979, LB 322, § 4; Laws 1981, LB 545, § 4; Laws 1981, LB 144, § 4; R.S.1943, (1983), § 19-3905; Laws 1993, LB 158, § 4; Laws 2012, LB782, § 16; Laws 2013, LB222, § 3.

13-1209 Assistance program; established; state financial assistance; limitation.

(1) A public transportation assistance program is hereby established to provide state assistance for the capital acquisition and operating costs of public transportation systems.

(2) Any municipality, county, transit authority, or qualified public-purpose organization shall be eligible to receive financial assistance for the eligible capital acquisition and operating costs of a public transportation system, whether the applicant directly operates such system or contracts for its operation. A qualified public-purpose organization shall not be eligible for financial assistance under the Nebraska Public Transportation Act if such organization is currently receiving state funds for a program which includes transportation services and such funding and services would be duplicated by the act. Eligible operating costs include those expenses incurred in the operation of a public transportation system which exceed the amount of operating revenue and which are not otherwise eligible for reimbursement from any available federal programs other than those administered by the United States Department of the Treasury. Eligible capital acquisition costs include investments in the purchase,

replacement, and rebuilding of buses and other vehicles used for public transportation.

(3) The state grant to an applicant shall not exceed fifty percent of the eligible capital acquisition or operating costs of the public transportation system as provided for in subsection (2) of this section. The amount of state funds shall be matched by an equal amount of local funds in support of capital acquisition or operating costs.

Source: Laws 1975, LB 443, § 13; Laws 1981, LB 144, § 6; R.S.1943, (1983), § 19-3909; Laws 1993, LB 158, § 6; Laws 2016, LB977, § 1.

13-1210 Assistance program; department; certify funding; report.

(1) The department shall annually certify the amount of capital acquisition and operating costs eligible for funding under the public transportation assistance program established under section 13-1209.

(2) The department shall submit an annual report to the chairperson of the Appropriations Committee of the Legislature on or before December 1 of each year regarding funds requested by each applicant for eligible capital acquisition and operating costs in the current fiscal year pursuant to subsection (2) of section 13-1209 and the total amount of state grants projected to be awarded in the current fiscal year pursuant to the public transportation assistance program. The report submitted to the committee shall be submitted electronically. The report shall separate into two categories the requests and grants awarded for handicapped vans, otherwise known as paratransit vehicles, and requests and grants awarded for handicapped-accessible fixed-route bus systems.

Source: Laws 1980, LB 722, § 12; Laws 1986, LB 599, § 3; R.S.Supp.,1986, § 19-3909.01; Laws 2004, LB 1144, § 1; Laws 2008, LB1068, § 1; Laws 2012, LB782, § 17; Laws 2016, LB977, § 2; Laws 2017, LB339, § 76.

13-1212 Department; rules and regulations; duties; public-purpose organization; denied financial assistance; petition; hearing.

(1) The department shall administer sections 13-1209 to 13-1212, and shall adopt and promulgate such rules and regulations pursuant to the Administrative Procedure Act as are necessary, including but not limited to defining eligible capital acquisition and operating costs, establishing contractual and other requirements including standardized accounting and reporting requirements, which shall include the applicant's proposed service area, the type of service proposed, all routes and schedules, and any further information needed for recipients to ensure the maximum feasible coordination and use of state funds, establishing application procedures, and developing a policy for apportioning funds made available for this program should they be insufficient to cover all eligible projects. Priority on the allocation of all funds shall be given to those proposed projects best suited to serve the needs of the elderly and handicapped and to proposed projects with federal funding participation.

(2) Any public-purpose organization proposing to provide public transportation denied financial assistance as a result of a determination by the department that an area is adequately served by existing transportation services may submit a petition to the department requesting the department to reclassify the proposed service area as not being adequately served by existing public trans-

portation services. The petition submitted to the department by the public-purpose organization shall bear the signatures of at least fifty registered voters residing in the proposed service area. Upon receipt of the petition the department shall hold a public hearing in the proposed service area and after such hearing shall determine whether the proposed service area is already adequately served. In carrying out its duties under this section the department shall comply with the provisions of the Administrative Procedure Act. The department shall not be required to conduct a reevaluation hearing for an area more frequently than once a year.

Source: Laws 1975, LB 443, § 15; Laws 1981, LB 144, § 7; R.S.1943, (1983), § 19-3911; Laws 2016, LB977, § 3; Laws 2017, LB339, § 77.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 19

DEVELOPMENT DISTRICTS

Section

13-1905. Development districts; certification for funding.

13-1906. Distribution of financial assistance.

13-1907. Rules and regulations; annual reports; evaluation; Governor; powers.

13-1905 Development districts; certification for funding.

If state funding is available for distribution pursuant to section 13-1906, the Department of Economic Development shall certify development districts for funding eligibility. Certification shall be based on the following requirements:

(1) The development district shall be formed as provided in section 13-1902;

(2) The development district shall have a staff which shall at a minimum include a full-time director to provide assistance to the local governments which are members of the development district; and

(3) The agreement creating the development district shall insure that all of the local governments within the Nebraska planning and development region may at any time join in the development district.

Source: Laws 1992, LB 573, § 5; Laws 2015, LB661, § 25.

13-1906 Distribution of financial assistance.

(1) The Department of Economic Development shall distribute financial assistance from the state, if available, to the various development districts as they are certified in the manner prescribed in subsection (2) of this section.

(2)(a) Fifty percent of the total sum allocated shall be divided equally among the certified development districts. In certified districts formed by regional councils, funds may be prorated among the cooperating regional councils based upon a formula approved by the governing boards of each of the cooperating regional councils and accepted by the department.

(b) Twenty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the population of all certified development districts in the state. For purposes of this subdivision, population shall mean the number of residents as shown by the

latest federal decennial census, except that the population of a county shall mean the number of residents in the unincorporated areas of the county.

(c) Thirty percent of the total sum allocated shall be divided among the certified development districts based upon their proportional share of the local governments located within all certified development districts.

(3) Distributions to newly certified development districts shall not reduce financial assistance to previously funded development districts. State financial assistance shall not exceed the total local dollars received by the development district as verified by the department. For purposes of this subsection, local dollars received shall mean the total local dues received by a development district from any local government as a condition of membership in a development district.

Source: Laws 1992, LB 573, § 6; Laws 2015, LB661, § 26.

13-1907 Rules and regulations; annual reports; evaluation; Governor; powers.

(1) The Department of Economic Development shall adopt and promulgate rules and regulations to carry out sections 13-1901 to 13-1907 which shall include standardized reporting and application procedures. Each development district shall submit annual performance and financial reports to the department which shall address the activities performed and services delivered.

(2) The Governor shall, from time to time, evaluate the effectiveness and activities of the development districts receiving assistance. If the Governor finds a development district to be ineffective, he or she may take action, including the withholding of assistance authorized under section 13-1906.

Source: Laws 1992, LB 573, § 7; Laws 2015, LB661, § 27.

Cross References

Administrative Procedure Act, see section 84-920.

**ARTICLE 21
ENTERPRISE ZONES**

Section

- 13-2101.01. Act, how cited.
- 13-2103. Designation; application; requirements; limitation; term.
- 13-2105. State government interagency response team.
- 13-2109. Enterprise zone association; board; membership; vacancies; powers and duties; dissolution.
- 13-2112. Rules and regulations.
- 13-2114. Repealed. Laws 2013, LB 222, § 48.

13-2101.01 Act, how cited.

Sections 13-2101 to 13-2112 shall be known and may be cited as the Enterprise Zone Act.

Source: Laws 1993, LB 725, § 1; Laws 2013, LB222, § 4.

13-2103 Designation; application; requirements; limitation; term.

(1)(a) Beginning on the date the rules and regulations updated in accordance with section 13-2112 become effective as provided in section 84-908, the

department shall, for a period of one hundred eighty days, accept formal applications for the designation of enterprise zones. Within sixty days after the end of such application period, the department may designate not more than five areas as enterprise zones based on eligible applications it has received.

(b) If the department has received fewer than five applications for the designation of enterprise zones after the end of the application period described in subdivision (1)(a) of this section, the department may establish a period of time within which to accept additional applications. Within sixty days after the end of such extended application period, the department may designate additional areas as enterprise zones based on additional eligible applications received, but not more than a total of five areas may be designated as enterprise zones pursuant to this section.

(c) In the application period, the department may reject from consideration any application which does not fully and completely comport with the provisions of section 13-2104 at the end of the designated application period. In choosing among eligible applications for enterprise zone designation, the department shall consider the levels of distress existing within the applicant areas and the contents of the applicant's formal enterprise zone application.

(d) Each area designated as an enterprise zone shall meet all eligibility criteria. Of the enterprise zones authorized, no more than one shall be located inside the boundaries of a city of the metropolitan class and no more than one inside a city of the primary class.

(2) Any city, village, tribal government area, or county may apply for designation of an area within such city, village, tribal government area, or county as an enterprise zone, except that if a county seeks to have an area within an incorporated city or village or a tribal government area designated as an enterprise zone, the consent of the governing body of such city, village, or tribal government area shall first be required.

(3) If an incorporated city or village or a tribal government area consents, a county may apply on behalf of the city, village, or tribal government area for certification of an area within such city, village, or tribal government area as an enterprise zone. Both a county and a city, village, or tribal government area shall not apply for certification of the same area.

(4) Two or more counties or tribal government areas may jointly apply for designation of an area as an enterprise zone which is located on both sides of their common boundaries.

(5) Political subdivisions wishing to file an application for designation of an enterprise zone shall first follow the procedures set out in sections 13-2106 to 13-2108. An application for designation as an enterprise zone shall be in a form and contain information prescribed by the department pursuant to section 13-2104.

(6) An area designated as an enterprise zone shall retain such designation for a period of ten years from the date of such designation.

(7) All enterprise zones designated as such within a single county shall not exceed a total of sixteen square miles in area.

Source: Laws 1992, LB 1240, § 3; Laws 1993, LB 725, § 4; Laws 2014, LB800, § 1; Laws 2016, LB948, § 1.

13-2105 State government interagency response team.

The Governor shall provide a state government interagency response team to work with local governments and enterprise zone associations on effective ways to use new and existing resources from all levels of government to improve development capacity in enterprise zones and accomplish the purposes of the Enterprise Zone Act.

Source: Laws 1992, LB 1240, § 5; Laws 1993, LB 725, § 6; Laws 2014, LB800, § 2.

13-2109 Enterprise zone association; board; membership; vacancies; powers and duties; dissolution.

(1) There shall be created an enterprise zone association within each proposed enterprise zone upon the decision by the political subdivision to submit an enterprise zone application. Such enterprise zone association shall be governed by an enterprise zone association board which shall consist of seven members. The initial members of the board shall be appointed by the mayor of the city or village with the approval of the city council or village board, by the county board, or by the tribal chairperson. The city council, village board, county board, or tribal government shall establish the length of the terms and shall establish staggered terms so that no more than four members of the enterprise zone association board shall be appointed in any one-year period.

(2) The city council, village board, county board, or tribal government shall, by majority vote, nominate candidates and appoint from the candidates qualified persons to fill each vacant, open, or opening seat on the enterprise zone association board. A member of the enterprise zone association board, not otherwise disqualified, whose term of office has ended shall continue to serve as a member of the board until his or her successor is properly qualified and appointed.

(3) Vacancies on the enterprise zone association board shall be filled in the same manner as provided for appointments other than initial appointments, and such members shall serve for the balance of the unexpired terms. A board member may serve more than one term. Any board member appointed as a resident of the area constituting the enterprise zone shall cease to be a member of the enterprise zone association board at such time as he or she ceases to be a resident within the area constituting the zone, and at such time his or her seat shall be vacant.

(4) The enterprise zone association board shall select its own officers and may exercise such other additional powers and authority as may be granted it by the department or the city, village, county, or tribal government. The presence of at least four members of the enterprise zone association board shall be necessary to transact any business.

(5) Individuals chosen to serve as members of the enterprise zone association board shall include property owners, business operators, and users of space within the area of the enterprise zone as well as individuals representing groups or organizations with an interest in furthering the purposes and goals of the enterprise zone. Not less than two-thirds of the members of the enterprise zone association board shall be residents of the area constituting the enterprise zone. For purposes of this section, residents of the area constituting the enterprise zone shall be construed to include those persons residing within a county in which an enterprise zone is located when the enterprise zone is not located in a city of the primary or metropolitan class.

(6) The city, village, county, or tribal government establishing the enterprise zone association shall provide appropriate staff assistance and support to the association.

(7) If an applicant for designation as an enterprise zone does not receive such designation, the association of such applicant shall be dissolved.

Source: Laws 1992, LB 1240, § 9; Laws 1993, LB 725, § 10; Laws 1998, LB 1259, § 1; Laws 2014, LB800, § 3.

13-2112 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Enterprise Zone Act. The department shall update such rules and regulations within six months after July 18, 2014.

Source: Laws 1992, LB 1240, § 12; Laws 1993, LB 725, § 15; Laws 2014, LB800, § 4.

13-2114 Repealed. Laws 2013, LB 222, § 48.

ARTICLE 22

LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES

Section

13-2203. Additional expenditures; governing body; powers; procedures.

13-2203 Additional expenditures; governing body; powers; procedures.

In addition to other expenditures authorized by law, each governing body may approve:

(1)(a) The expenditure of public funds (1) for the payment or reimbursement of actual and necessary expenses incurred by elected and appointed officials, employees, or volunteers at educational workshops, conferences, training programs, official functions, hearings, or meetings, whether incurred within or outside the boundaries of the local government, if the governing body gave prior approval for participation or attendance at the event and for payment or reimbursement either by the formal adoption of a uniform policy or by a formal vote of the governing body. Authorized expenses may include:

(i) Registration costs, tuition costs, fees, or charges;

(ii) Mileage at the rate allowed by section 81-1176 or actual travel expense if travel is authorized by commercial or charter means; and

(iii) Meals and lodging at a rate not exceeding the applicable federal rate unless a fully itemized claim is submitted substantiating the costs actually incurred in excess of such rate and such additional expenses are expressly approved by the governing body; and

(b) Authorized expenditures shall not include expenditures for meals of paid members of a governing body provided while such members are attending a public meeting of the governing body unless such meeting is a joint public meeting with one or more other governing bodies;

(2) The expenditure of public funds for:

(a) Nonalcoholic beverages provided to individuals attending public meetings of the governing body; and

(b) Nonalcoholic beverages and meals:

(i) Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including, but not limited to, tornado, severe storm, fire, or accident;

(ii) Provided for any volunteers during or immediately following their participation in any activity approved by the governing body, including, but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal; or

(iii) Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed fifty dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination, if authorized by the governing body; and

(3) The expenditure of public funds for plaques, certificates of achievement, or items of value awarded to elected or appointed officials, employees, or volunteers, including persons serving on local government boards or commissions. Before making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. Such policy, following its initial adoption, shall not be amended or altered more than once in any twelve-month period.

Source: Laws 1993, LB 734, § 11; Laws 2018, LB1036, § 1.
Effective date July 19, 2018.

ARTICLE 24

RETIREMENT BENEFITS AND PLANS

Section

13-2402. Political subdivision with defined benefit plan; notification required; actuarial experience study; valuation report; filing; report required; when; contents; failure to file; audit; costs.

13-2402 Political subdivision with defined benefit plan; notification required; actuarial experience study; valuation report; filing; report required; when; contents; failure to file; audit; costs.

(1) On or before November 1, 2014, each political subdivision which offers a defined benefit plan pursuant to section 401(a) of the Internal Revenue Code which was open to new members on or after January 1, 2004, shall submit written notification to the Nebraska Retirement Systems Committee of the Legislature that it offers such a plan.

(2) Each political subdivision which offers such a defined benefit plan shall conduct an experience study at least once every four years to review the actuarial assumptions used to determine funding needs for its defined benefit plan. Each such political subdivision shall electronically file a copy of the most recent actuarial experience study with the committee by October 15, 2016, and shall electronically file a copy of each study completed pursuant to this subsection by the next October 15 after completion of the study.

(3) Beginning November 15, 2014, and each October 15 thereafter, the governing entity of the retirement plan of each political subdivision that offers

such a defined benefit retirement plan shall file with the committee a copy of the most recent annual actuarial valuation of the retirement plan. The valuation report shall be filed electronically.

(4)(a) Beginning November 15, 2014, and each October 15 thereafter, the governing entity of the retirement plan of each political subdivision that offers such a defined benefit retirement plan shall file a report with the committee if either of the following conditions exists as of the latest annual actuarial valuation of the retirement plan: (i) The contributions do not equal the actuarial requirement for funding; or (ii) the funded ratio is less than eighty percent.

(b) The report shall include, but not be limited to, an analysis of the conditions and a recommendation for the circumstances and timing of any future benefit changes, contribution changes, or other corrective action, or any combination of actions, to improve the conditions. The committee may require a governing entity to present its report to the committee at a public hearing. The report shall be submitted electronically.

(5) If a governing entity does not file the reports required by subsection (2), (3), or (4) of this section with the committee by October 15, the Auditor of Public Accounts may audit, or cause to be audited, the political subdivision offering the retirement plan. All costs of the audit shall be paid by the political subdivision.

(6) For purposes of this section, political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions.

Source: Laws 2014, LB759, § 1; Laws 2015, LB42, § 1; Laws 2016, LB447, § 1.

ARTICLE 25

JOINT PUBLIC AGENCY ACT

Section

13-2507. Power to tax; election; when required.

13-2525. Biennial report; fee.

13-2531. General obligation bonds.

13-2507 Power to tax; election; when required.

(1) Subject to subsection (4) of this section, a joint public agency shall have only those powers of taxation as one or more of the participating public agencies has and only as specifically provided in the agreement proposing creation of the joint public agency, except that a joint public agency shall not levy a local option sales tax. Participating public agencies may agree to allow the joint public agency to levy a property tax rate not to exceed a limit as provided in the agreement if the agreement also limits the levy authority of the overlapping participating public agencies collectively to the same amount. The levy authority of a joint public agency shall be allocated by the city or county as provided in section 77-3443, and the agreement may require allocation of levy authority by the city or county.

(2) If one or more of the participating public agencies is a municipality, the agreement may allow any occupation or wheel tax to be extended over the area encompassed by the joint public agency at a rate uniform to that of the city or village for the purpose of providing revenue to finance the services to be provided by the joint public agency. The tax shall not be extended until the

procedures governing enactment by the municipality are followed by the joint public agency, including any requirement for a public vote.

(3) If the agreement calls for the allocation of property tax levy authority to the joint public agency, the amount of the allocation to the joint public agency and from each participating public agency shall be reported to the Property Tax Administrator.

(4)(a) Prior to the issuance of bonds and the pledge of property tax levy authority allocated to a joint public agency to pay the principal of and interest on bonds to be issued by the joint public agency, the joint public agency shall hold an election to present the question of issuing such bonds and levying such tax to the registered voters of the participating public agency which allocated such property tax levy authority. Such election shall be held at a special election called for such purpose or an election held in conjunction with a statewide or local primary or general election.

(b) If a ballot question is required to be submitted to the registered voters of more than one participating public agency pursuant to subdivision (a) of this subsection and if the participating public agencies have overlapping jurisdiction of any geographic area, the registered voters residing in the geographic area subject to overlapping jurisdiction shall only be entitled to one vote on the ballot question.

(c) A joint public agency may issue refunding bonds as authorized in section 13-2537 which are payable from the same security and tax levy authority as bonds being refunded without holding an election as required by this subsection if the issuance of the refunding bonds does not allow additional principal and does not allow extension of the final maturity date of the indebtedness.

Source: Laws 1999, LB 87, § 7; Laws 2015, LB132, § 1.

13-2525 Biennial report; fee.

(1) Commencing in 2001 and each odd-numbered year thereafter, each joint public agency shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(a) The name of the joint public agency;

(b) The street address of its principal office and the name of its manager or executive director, if any, at the office in this state;

(c) The names and business or residence addresses of its representatives and principal officers;

(d) A brief description of the nature of its activities; and

(e) The names of the participating public agencies.

(2) The information in the biennial report must be current on the date the biennial report is executed on behalf of the joint public agency.

(3) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which the joint public agency was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. The biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(4) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting joint public agency in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(5) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee of twenty dollars. The fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(6) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 1999, LB 87, § 25; Laws 2014, LB774, § 1.

13-2531 General obligation bonds.

Any joint public agency may from time to time issue its bonds in such principal amounts as its board determines is necessary to provide sufficient funds to carry out any of the joint public agency’s purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the board may determine, and the payment of all other costs or expenses of the joint public agency incident to and necessary or convenient to carry out its purposes and powers. Except as provided in section 72-2304, bonds issued prior to April 18, 2018, for purposes of the Public Facilities Construction and Finance Act may be issued with no requirement for a vote. Bonds issued on or after April 18, 2018, for purposes of the Public Facilities Construction and Finance Act shall be subject to a vote prior to issuance as provided in the act.

Source: Laws 1999, LB 87, § 31; Laws 2005, LB 217, § 11; Laws 2018, LB1000, § 2.
Effective date April 18, 2018.

Cross References

Public Facilities Construction and Finance Act, see section 72-2301.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section

- 13-2603. Terms, defined.
- 13-2604. State assistance.
- 13-2605. State assistance; application; contents.
- 13-2610. Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

13-2603 Terms, defined.

For purposes of the Convention Center Facility Financing Assistance Act:

(1) Associated hotel means any publicly or privately owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located, in whole or in part, within six hundred yards of an eligible facility, measured from any point of the exterior perimeter of the eligible facility but not from any parking facility or other structure;

(2) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(3) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(4) Convention and meeting center facility means a temperature-controlled building and personal property primarily used as a convention and meeting center, including an auditorium, an exhibition hall, a facility for onsite food preparation and serving, an onsite, directly connected parking facility for the use of the convention and meeting center facility, and an onsite administrative office of the convention and meeting center facility;

(5)(a) Eligible facility means any publicly owned convention and meeting center facility approved for state assistance on or before June 1, 2007, any publicly owned sports arena facility attached to such convention and meeting center facility, or any publicly or privately owned convention and meeting center facility or publicly or privately owned sports arena facility acquired, constructed, improved, or equipped after June 1, 2007; and

(b) Beginning with applications for financial assistance received on or after February 1, 2008, eligible facility does not include any publicly or privately owned sports arena facility with a seating capacity greater than sixteen thousand seats;

(6) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(7) Political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions which has statutory authority to issue general obligation bonds;

(8) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(9) Sports arena facility means any enclosed temperature-controlled building primarily used for competitive sports, including arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities.

Source: Laws 1999, LB 382, § 3; Laws 2007, LB551, § 2; Laws 2008, LB912, § 1; Laws 2016, LB884, § 1.

Cross References

Limitation on applications, see section 13-2612.

13-2604 State assistance.

Any political subdivision that has acquired, constructed, improved, or equipped or has approved a general obligation bond issue to acquire, construct,

improve, or equip eligible facilities may apply to the board for state assistance. The state assistance shall be used:

(1) To pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip eligible facilities until repayment in full of the amounts expended or borrowed by the political subdivision, including the principal of and interest on bonds, for eligible facilities; and

(2) To pay for capital improvements to eligible facilities.

Source: Laws 1999, LB 382, § 4; Laws 2010, LB779, § 3; Laws 2016, LB884, § 2.

Cross References

Limitation on applications, see section 13-2612.

13-2605 State assistance; application; contents.

(1) All applications for state assistance under the Convention Center Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the eligible facility or the amounts necessary to repay the original investment by the applicant in the eligible facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project; and

(c) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

(5) Each political subdivision that had an application for state assistance approved prior to October 1, 2016, shall submit a map to the Department of Revenue showing the area that lies within six hundred yards of the eligible facility as such area is described in subdivision (1) of section 13-2603. The department shall approve such area if it satisfies the requirements of subdivision (1) of section 13-2603.

Source: Laws 1999, LB 382, § 5; Laws 2007, LB551, § 3; Laws 2016, LB884, § 3.

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.

(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. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Convention Center Support 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) 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 (a) 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, (b) seventy-five million dollars for any one approved project, or (c) 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.

(3)(a) Ten percent of such funds appropriated to a city of the metropolitan class under subsection (2) of this section 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.

(b) Each area with a high concentration of poverty that has been distributed funds under subdivision (3)(a) of this section 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.

(c) A committee formed under subdivision (3)(b) of this section 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.

(d) A committee formed under subdivision (3)(b) of this section 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 18-2115.01. The committee shall research potential projects and make the final determination regarding the annual distribution of funding to such projects.

(e) 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.

(4)(a) Ten percent of such funds appropriated to a city of the primary class under subsection (2) of this section may, if the city determines by consent of the city council that such funds are not currently needed for the purposes described in section 13-2604, be used as follows:

(i) For investment in the construction of qualified low-income housing projects as defined in 26 U.S.C. 42, including qualified projects receiving Nebraska affordable housing tax credits under the Affordable Housing Tax Credit Act; or

(ii) If there are no such qualified low-income housing projects as defined in 26 U.S.C. 42 being constructed or expected to be constructed within the political subdivision, for investment in areas with a high concentration of poverty to assist with low-income housing needs.

(b) 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 primary class consisting of one or more contiguous census tracts, as determined by the most recent American Community Survey 5-Year Estimate, 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 American Community Survey 5-Year Estimate.

(5) 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 (2) of this section, whichever comes first.

(6) 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. Upon the annual certification required pursuant to section 13-2609 and following the transfer to the Convention Center Support Fund required pursuant to subsection (1) of this section, the State Treasurer shall transfer an amount equal to the remaining thirty percent from the Convention Center Support Fund to the Civic and Community Center Financing Fund.

(7) 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; Laws 2015, LB661, § 28; Laws 2016, LB884, § 4; Laws 2018, LB874, § 1.
Effective date July 19, 2018.

Cross References

Affordable Housing Tax Credit Act, see section 77-2501.
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.
 13-2704.01. Grants of assistance; purposes; applications; evaluation.
 13-2704.02. Grants of assistance; engineering and technical studies.
 13-2705. Conditional grant approval; limits; conditions.
 13-2707. Department; evaluation criteria; match required; location.
 13-2707.01. Grant; engineering and technical studies; evaluation criteria.
 13-2709. Information on grants; department; duties; Political Subdivision Recapture Cash Fund; created; use; investment.

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; Laws 2013, LB153, § 1.

13-2702 Purpose of act.

The purpose of the Civic and Community Center Financing Act is to support the development of civic, community, and recreation 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; Laws 2013, LB153, § 2.

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 property that is owned by a municipality and located within 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;
- (5) Historic building or district means a building or district eligible for listing on or currently listed on the National Register of Historic Places; and
- (6) Recreation center means a facility or park used for athletics, fitness, sport activities, or recreation that is owned by a municipality and is available for use by the general public with or without charge. Recreation center does not

include any facility that requires a person to purchase a membership to utilize such facility.

Source: Laws 1999, LB 382, § 15; Laws 2011, LB297, § 4; Laws 2013, LB153, § 3; Laws 2018, LB940, § 1.
Effective date April 12, 2018.

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. 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. Transfers may be made from the fund to the General Fund, the Department of Revenue Enforcement Fund, and the State Colleges Sport Facilities Cash Fund at the direction of the Legislature.

(2)(a) The department shall use the Civic and Community Center Financing Fund for the following purposes:

(i) For grants of assistance as described in section 13-2704.01;

(ii) For grants of assistance as described in section 13-2704.02; and

(iii) For reasonable and necessary costs of the department directly related to the administration of the fund, not to exceed the amount needed to employ a one-half full-time equivalent employee.

(b) The fund may not be used for programming, marketing, advertising, or facility-staffing activities.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund on October 1 of 2012, 2013, and 2014. Commencing October 1, 2015, and every year thereafter, the State Treasurer shall transfer three hundred thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5; Laws 2011, LB297, § 5; Laws 2012, LB969, § 4; Laws 2013, LB153, § 4; Laws 2015, LB661, § 29.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

13-2704.01 Grants of assistance; purposes; applications; evaluation.

(1) The department shall use the fund to provide grants of assistance for the following purposes:

(a) To assist in the construction of new civic centers and recreation centers or the renovation or expansion of existing civic centers and recreation centers;

(b) To assist in the conversion, rehabilitation, or reuse of historic buildings or districts;

(c) To assist in the preservation and restoration of historic buildings owned by a nonprofit organization if a contractual relationship is created between a municipality and the nonprofit organization; or

(d) To upgrade community centers, including the demolition of substandard and abandoned buildings.

(2) Applications for grants of assistance pursuant to this section shall be evaluated by the department pursuant to section 13-2707.

Source: Laws 2013, LB153, § 5; Laws 2018, LB379, § 3; Laws 2018, LB940, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB379, section 3, with LB940, section 2, to reflect all amendments.

Note: Changes made by LB379 became effective April 5, 2018. Changes made by LB940 became effective April 12, 2018.

13-2704.02 Grants of assistance; engineering and technical studies.

(1) The department shall use the fund to provide grants of assistance for engineering and technical studies directly related to projects described in section 13-2704.01.

(2) Applications for grants of assistance pursuant to this section shall be evaluated by the department pursuant to section 13-2707.01.

Source: Laws 2013, LB153, § 6.

13-2705 Conditional grant approval; limits; conditions.

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 in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least fifteen thousand dollars but no more than:

(i) For a city of the primary class, two million two hundred fifty thousand dollars;

(ii) For a city with a population of more than forty thousand but less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, one million one hundred twenty-five thousand dollars;

(iii) For a city with a population of more than twenty thousand but less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, seven hundred fifty thousand dollars;

(iv) For a city with a population of more than ten thousand but less than twenty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, six hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, three hundred seventy-five thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least three thousand dollars but no more than fifteen thousand dollars;

(2) Upon the balance of the fund reaching three million seven hundred fifty thousand dollars, and until the balance of the fund falls below one million five

hundred thousand dollars, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least fifteen thousand dollars but no more than:

(i) For a city of the primary class, three million three hundred seventy-five thousand dollars;

(ii) For a city with a population of more than forty thousand but less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, one million six hundred eighty-seven thousand dollars;

(iii) For a city with a population of more than twenty thousand but less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, one million one hundred twenty-five thousand dollars;

(iv) For a city with a population of more than ten thousand but less than twenty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, nine hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, five hundred sixty-two thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least three thousand dollars but no more than fifteen thousand dollars;

(3) Assistance from the fund shall not amount to more than fifty percent of the cost of the project for which a grant is requested;

(4) A municipality shall not be awarded more than one grant of assistance under section 13-2704.01 and one grant of assistance under section 13-2704.02 in any two-year period; and

(5) A municipality shall not sell any civic, community, or recreation center that received grant funds for at least five years under the Civic and Community Center Financing Act.

Source: Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1; Laws 2010, LB789, § 1; Laws 2011, LB297, § 6; Laws 2013, LB153, § 7; Laws 2017, LB113, § 3; Laws 2018, LB940, § 3.
Effective date April 12, 2018.

13-2707 Department; evaluation criteria; match required; location.

(1) The department shall evaluate all applications for grants of assistance under section 13-2704.01 based on the following criteria, which are listed in no particular order of preference:

(a) Retention Impact. Funding decisions by the department shall be based on the likelihood of the project retaining existing residents in the community where the project is located, developing, sustaining, and fostering community connections, and enhancing the potential for economic growth in a manner that will sustain the quality of life and promote long-term economic development;

(b) New Resident Impact. Funding decisions by the department shall be based on the likelihood of the project attracting new residents to the community where the project is located;

(c) Visitor Impact. Funding decisions by the department shall be based on the likelihood of the project enhancing or creating an attraction that would increase the potential of visitors to the community where the project is located from inside and outside the state;

(d) 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 center, community center, or recreation center; and

(e) Project Planning. Projects with completed technical assistance and feasibility studies shall be preferred to those with no prior planning.

(2) The department shall give priority to applications from municipalities which have not received a grant of assistance under section 13-2704.01 within the last ten years.

(3) Any grant of assistance under section 13-2704.01 shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash.

(4) To receive a grant of assistance under section 13-2704.01, the project for which the grant is requested shall be located in the municipality that applies for the grant.

Source: Laws 1999, LB 382, § 19; Laws 2003, LB 385, § 3; Laws 2011, LB297, § 7; Laws 2013, LB153, § 8; Laws 2018, LB940, § 4. Effective date April 12, 2018.

13-2707.01 Grant; engineering and technical studies; evaluation criteria.

The department shall evaluate all applications for grants of assistance under section 13-2704.02 based on the following criteria:

(1) 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; and

(2) Project Location. Assistance from the fund shall be for engineering and technical studies related to projects that will be located in the municipality that applies for the grant.

Source: Laws 2013, LB153, § 9.

13-2709 Information on grants; department; duties; Political Subdivision Recapture Cash Fund; created; use; investment.

(1) The department shall submit, as part of the department's annual status report under section 81-1201.11, the following information regarding the Civic and Community Center Financing Act:

(a) Information documenting the grants conditionally approved for funding by the Legislature in the following fiscal year;

(b) Reasons why a full application was not sent to any municipality seeking assistance under the act;

(c) The amount of sales tax revenue generated for the fund pursuant to subsection (6) of section 13-2610 and subsection (9) of section 13-3108, the

total amount of grants applied for under the act, the year-end fund balance, the amount of the year-end fund balance which has not been committed to funding grants under the act, and, if all available funds have not been committed to funding grants under the act, an explanation of the reasons why all such funds have not been so committed;

(d) The amount of appropriated funds actually expended by the department for the year;

(e) The department's current budget for administration of the act and the department's planned use and distribution of funds, including details on the amount of funds to be expended on grants and the amount of funds to be expended by the department for administrative purposes; and

(f) Grant summaries, including the applicant municipality, project description, grant amount requested, amount and type of matching funds, and reasons for approval or denial based on evaluation criteria from section 13-2707 or 13-2707.01 for every application seeking assistance under the act.

(2) If the amount of the year-end fund balance which has not been committed to funding grants under the act as reported under subdivision (1)(c) of this section, excluding any amount required to be transferred under subsection (3) of section 13-2704, is more than one million dollars, the department shall notify the State Treasurer of the amount in excess of one million dollars. The State Treasurer shall transfer the amount in excess of one million dollars from the Civic and Community Center Financing Fund to the Political Subdivision Recapture Cash Fund.

(3) The Political Subdivision Recapture Cash Fund is created and shall consist of money transferred under subsection (2) of this section. Any money in the Political Subdivision Recapture 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. By October 1 of each year, the State Treasurer shall distribute the money in the Political Subdivision Recapture Cash Fund to the political subdivisions which have an application for state assistance for an eligible facility or an eligible sports arena facility approved under the Convention Center Facility Financing Assistance Act or the Sports Arena Facility Financing Assistance Act. Each political subdivision shall receive a proportionate share of the amount to be distributed under this subsection, and such proportionate share shall be based on the amount of sales tax revenue generated for the Civic and Community Center Financing Fund during the most recently completed fiscal year by the political subdivision's facility. The Tax Commissioner shall supply the State Treasurer with any information needed to make the distributions required in this subsection.

Source: Laws 1999, LB 382, § 21; Laws 2011, LB404, § 2; Laws 2013, LB153, § 10; Laws 2014, LB867, § 1; Laws 2016, LB285, § 1; Laws 2016, LB884, § 5.

Cross References

Convention Center Facility Financing Assistance Act, see section 13-2601.

Nebraska Capital Expansion Act, see section 72-1269.

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

Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 28
MUNICIPAL COUNTIES

Section

- 13-2809. Municipalities and fire protection districts within municipal county; treatment.
- 13-2816. Nebraska Revenue Act of 1967; applicability.

13-2809 Municipalities and fire protection districts within municipal county; treatment.

(1) An area within the boundaries of a municipality which remains within the boundaries of a municipal county and is not consolidated into the municipal county at the time of the formation of the municipal county shall not be considered to be part of the municipal county for any purpose. Such a municipality shall not be annexed by the municipal county, and such a municipality shall not annex any territory, for at least four years after the date of creation of the municipal county. Such a municipality shall retain:

(a) The authority to levy property taxes, not to exceed ninety cents per one hundred dollars of taxable value except as provided in sections 77-3442 and 77-3444; and

(b) All the other powers and duties applicable to a municipality of the same population with the same form of government in effect on the date of creation of the municipal county, including, but not limited to, its zoning jurisdiction and the authority to impose a tax as provided in the Local Option Revenue Act.

(2) In order to provide economical and efficient services, a municipality within the boundaries of a municipal county may annex adjacent territory within the municipal county if the municipal county consents. Consent shall be granted if the services will be provided by the municipality within the annexed territory at less cost than similar services provided by the municipal county.

(3) All fire protection districts which are within the boundaries of a municipal county shall continue to exist after formation of the municipal county.

Source: Laws 2001, LB 142, § 9; Laws 2015, LB325, § 2.

Cross References

Local Option Revenue Act, see section 77-27,148.

13-2816 Nebraska Revenue Act of 1967; applicability.

(1) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with sections 13-2813 to 13-2815, shall govern transactions, proceedings, and activities pursuant to any sales and use tax imposed by a municipal county.

(2) For purposes of the sales and use tax imposed by a municipal county, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are consummated:

(a) At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and motorboats, if a purchaser takes possession of tangible personal property within a municipal county, which has enacted a tax under section 13-2813, regardless of the business location of the Nebraska retailer;

(b) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that Nebraska intrastate message toll telephone and telegraph services which are consummated in the county where the customer is normally billed for such services;

(c) At the physical location of individual vending machines; and

(d) At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and motorboats sold or leased or rented for more than one year, except that the sale of any motor vehicle or trailer operated by a public power district and registered under section 60-3,228 is consummated at the place where the motor vehicle or trailer has situs as defined in section 60-349.

Source: Laws 2001, LB 142, § 16; Laws 2018, LB1030, § 1.
Operative date January 1, 2021.

Cross References

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

ARTICLE 31

SPORTS ARENA FACILITY FINANCING ASSISTANCE ACT

Section

- 13-3102. Terms, defined.
- 13-3103. State assistance; limitation.
- 13-3104. Application; contents; board; duties.
- 13-3106. Application; approval; board; findings; temporary approval; when; board; quorum.
- 13-3107. Tax Commissioner; duties; Department of Revenue; rules and regulations.
- 13-3108. Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; use.

13-3102 Terms, defined.

For purposes of the Sports Arena Facility Financing Assistance Act:

(1) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(2) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(3) Eligible sports arena facility means:

(a) Any publicly owned, enclosed, and temperature-controlled building primarily used for sports that has a permanent seating capacity of at least three thousand but no more than seven thousand seats and in which initial occupancy occurs on or after July 1, 2010. Eligible sports arena facility includes stadiums, arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities; and

(b) Any racetrack enclosure licensed by the State Racing Commission in which initial occupancy occurs on or after July 1, 2010, including concession areas, parking facilities, and onsite administrative offices connected with operating the racetrack;

(4) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(5) Increase in state sales tax revenue means the amount of state sales tax revenue collected by a nearby retailer during the fiscal year for which state assistance is calculated minus the amount of state sales tax revenue collected by the nearby retailer in the fiscal year that ended immediately preceding the date of occupancy of the eligible sports arena facility, except that the amount of state sales tax revenue of a nearby retailer shall not be less than zero;

(6) Nearby retailer means a retailer as defined in section 77-2701.32 that is located within the program area. The term includes a subsequent owner of a nearby retailer operating at the same location;

(7) New state sales tax revenue means:

(a) For nearby retailers that commenced collecting state sales tax during the period of time beginning twenty-four months prior to occupancy of the eligible sports arena facility and ending forty-eight months after the occupancy of the eligible sports arena facility or, for applications for state assistance approved prior to October 1, 2016, forty-eight months after October 1, 2016, one hundred percent of the state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to the program area; and

(b) For nearby retailers that commenced collecting state sales tax prior to twenty-four months prior to occupancy of the eligible sports arena facility, the increase in state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to the program area;

(8) Political subdivision means any city, village, or county;

(9) Program area means:

(a) For applications for state assistance submitted prior to October 1, 2016, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior perimeter of the facility but not from any parking facility or other structure; or

(b) For applications for state assistance submitted on or after October 1, 2016, the area that is located within six hundred yards of an eligible sports arena facility, measured from any point of the exterior perimeter of the facility but not from any parking facility or other structure, except that if twenty-five percent or more of such area is unbuildable property, then the program area shall be adjusted so that:

(i) It avoids as much of the unbuildable property as is practical; and

(ii) It contains contiguous property with the same total amount of square footage that the program area would have contained had no adjustment been necessary.

Approval of an application for state assistance by the board pursuant to section 13-3106 shall establish the program area as that area depicted in the map accompanying the application for state assistance as submitted pursuant to subdivision (2)(c) of section 13-3104.

(10) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(11) Unbuildable property means any real property that is located in a floodway, an environmentally protected area, a right-of-way, or a brownfield site as defined in 42 U.S.C. 9601 that the political subdivision determines is not suitable for the construction or location of residential, commercial, or other buildings or facilities.

Source: Laws 2010, LB779, § 8; Laws 2016, LB884, § 6.

13-3103 State assistance; limitation.

(1) Any political subdivision or its governing body that has (a) acquired, constructed, improved, or equipped, (b) approved a revenue bond issue or a general obligation bond issue to acquire, construct, improve, or equip, or (c) adopted a resolution authorizing the political subdivision to pursue a general obligation bond issue to acquire, construct, improve, or equip an eligible sports arena facility may apply to the board for state assistance. The state assistance shall only be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip the eligible sports arena facility.

(2) For applications for state assistance approved on or after October 1, 2016, no more than fifty percent of the final cost of the eligible sports arena facility shall be funded by state assistance received pursuant to section 13-3108.

Source: Laws 2010, LB779, § 9; Laws 2016, LB884, § 7.

13-3104 Application; contents; board; duties.

(1) All applications for state assistance under the Sports Arena Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible sports arena facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible sports arena facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the facility or the amounts necessary to repay the original investment by the applicant in the facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project and including a copy of any operating agreement or lease with substantial users of the facility;

(c) For applications submitted on or after October 1, 2016, a map identifying the program area, including any unbuildable property within the program area or taken into account in adjusting the program area as described in subdivision (9)(b) of section 13-3102; and

(d) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

Source: Laws 2010, LB779, § 10; Laws 2016, LB884, § 8.

13-3106 Application; approval; board; findings; temporary approval; when; board; quorum.

(1) After consideration of the application and the evidence, if the board finds that the facility described in the application is eligible and that state assistance is in the best interest of the state, the application shall be approved, except that an approval of an application submitted because of the requirement in subdivision (1)(c) of section 13-3103 is a temporary approval. If the general obligation bond issue is subsequently approved by the voters of the political subdivision, the approval by the board becomes permanent. If the general obligation bond issue is not approved by such voters, the temporary approval shall become void.

(2) In determining whether state assistance is in the best interest of the state, the board shall consider the fiscal and economic capacity of the applicant to finance the local share of the facility.

(3) A majority of the board members constitutes a quorum for the purpose of conducting business. All actions of the board shall be by a majority vote of all the board members, one of whom must be the Governor.

Source: Laws 2010, LB779, § 12; Laws 2016, LB884, § 9.

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 Legislature; 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 for purposes of the Sports Arena Facility Financing Assistance Act.

(3) On or before April 1, 2014, the Tax Commissioner shall certify to the State Treasurer, for each eligible sports arena facility for which state assistance has been approved, the total amount of state sales tax revenue and new state sales tax revenue described in subdivisions (1)(a)(i) through (iii) of this section that was collected from July 1, 2013, through December 31, 2013. The certified amount shall be used for purposes of making the transfer required under subdivision (2)(a) of section 13-3108 and making the distribution of state assistance described in subsection (4) of section 13-3108.

(4) Beginning in 2014, the Tax Commissioner shall use data from the informational returns and sales tax returns described in subsection (2) of this section to certify quarterly, for each eligible sports arena facility for which state assistance has been approved, the total amount of state sales tax revenue and new state sales tax revenue described in subdivisions (1)(a)(i) through (iii) of this section that was collected in the preceding calendar quarter. The Tax Commissioner shall certify such amount to the State Treasurer within sixty days after the end of each calendar quarter, and such certification shall be used for purposes of making the transfers required under subdivision (2)(b) of section 13-3108 and making the quarterly distributions of state assistance described in subsection (5) of section 13-3108.

(5) 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; Laws 2014, LB867, § 2.

13-3108 Sports Arena Facility Support Fund; created; investment; State Treasurer; duties; state assistance; use.

(1) The Sports Arena Facility 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) Upon receiving the certification described in subsection (3) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(b) Upon receiving the quarterly certification described in subsection (4) of section 13-3107, the State Treasurer shall transfer the amount certified to the fund.

(3)(a) It is the intent of the Legislature to appropriate from the fund money to be distributed as provided in subsections (4) and (5) of this section 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 the program area.

(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 (3)(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 (3)(a) of this section exceeds the amount to be appropriated under this subdivision, such excess funds shall be transferred to the General Fund.

(4) The amount certified under subsection (3) of section 13-3107 shall be distributed as state assistance on or before April 15, 2014.

(5) Beginning in 2014, quarterly distributions and associated transfers of state assistance shall be made. Such quarterly distributions and transfers shall be based on the certifications provided under subsection (4) of section 13-3107 and shall occur within fifteen days after receipt of such certification.

(6) The total amount of state assistance approved for an eligible sports arena facility shall neither (a) exceed fifty million dollars nor (b) be paid out for more than twenty years after the issuance of the first bond for the sports arena facility.

(7) 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 (6) of this section, whichever comes first.

(8) State assistance shall not be used for an operating subsidy or other ancillary facility.

(9) The thirty percent of state sales tax revenue remaining after the appropriation and transfer in subsection (3) of this section shall be appropriated by the Legislature and transferred quarterly beginning in 2014 to the Civic and Community Center Financing Fund.

(10) Except as provided in subsection (11) of this section for a city of the primary class, 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 for the same project for which the grant was awarded under the Civic and Community Center Financing Act.

(11) A city of the primary class shall not be eligible to receive a grant of assistance from the Civic and Community Center Financing Act if the city has applied for and received a grant of assistance under the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 14; Laws 2011, LB297, § 9; Laws 2012, LB426, § 2; Laws 2014, LB867, § 3; Laws 2015, LB170, § 1; Laws 2016, LB884, § 10.

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.

ARTICLE 32

PROPERTY ASSESSED CLEAN ENERGY ACT

Section

13-3201. Act, how cited.

13-3202. Legislative findings.

13-3203. Terms, defined.

13-3204. Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; resolution; contents; assessment contracts.

Section

- 13-3205. Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.
- 13-3206. Annual assessment; PACE lien; notice of lien; contents; priority; sale of property; use of proceeds; release of lien; recording.
- 13-3207. Municipality; raise capital; sources; bonds; issuance; statutory lien; vote; when required.
- 13-3208. Loss reserve fund; created; funding; use.
- 13-3209. Debt service reserve fund.
- 13-3210. Use of Interlocal Cooperation Act; public hearing; contract authorized.
- 13-3211. Report; contents.

13-3201 Act, how cited.

Sections 13-3201 to 13-3211 shall be known and may be cited as the Property Assessed Clean Energy Act.

Source: Laws 2016, LB1012, § 1; R.S.Supp.,2016, § 18-3201; Laws 2017, LB625, § 1.

13-3202 Legislative findings.

The Legislature finds that:

(1) Energy efficiency and the use of renewable energy are important for preserving the health and economic well-being of Nebraska's citizens. Using less energy decreases the cost of living and keeps the cost of public power low by delaying the need for additional power plants. By building the market for energy efficiency and renewable energy products, new jobs will be created for Nebraskans in the energy efficiency and renewable energy job sectors;

(2) To further these goals, the state should promote energy efficiency improvements and renewable energy systems;

(3) The upfront costs for energy efficiency improvements and renewable energy systems prohibit many property owners from making improvements. Therefore, it is necessary to authorize municipalities to implement an alternative financing method through the creation of clean energy assessment districts; and

(4) A public purpose will be served by providing municipalities with the authority to finance the installation of energy efficiency improvements and renewable energy systems through the creation of clean energy assessment districts.

Source: Laws 2016, LB1012, § 2; R.S.Supp.,2016, § 18-3202; Laws 2017, LB625, § 2.

13-3203 Terms, defined.

For purposes of the Property Assessed Clean Energy Act:

(1) Assessment contract means a contract entered into between a municipality, a property owner, and, if applicable, a third-party lender under which the municipality agrees to provide financing for an energy project in exchange for a property owner's agreement to pay an annual assessment for a period not to exceed the weighted average useful life of the energy project;

(2) Clean energy assessment district means a district created by a municipality to provide financing for energy projects;

(3) Energy efficiency improvement means any acquisition, installation, or modification benefiting publicly or privately owned property that is designed to reduce the electric, gas, water, or other utility demand or consumption of the buildings on or to be constructed on such property or to promote the efficient and effective management of natural resources or storm water, including, but not limited to:

(a) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;

(b) Storm windows and doors; multiglazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automated energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements;

(e) Caulking, weatherstripping, and air sealing;

(f) Replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

(g) Energy recovery systems;

(h) Daylighting systems;

(i) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(j) Facilities providing for water conservation or pollutant control;

(k) Roofs designed to reduce energy consumption or support additional loads necessitated by other energy efficiency improvements;

(l) Installation of energy-efficient fixtures, including, but not limited to, water heating systems, escalators, and elevators;

(m) Energy efficiency related items so long as the cost of the energy efficiency related items financed by the municipality does not exceed twenty-five percent of the total cost of the energy project; and

(n) Any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the municipality;

(4) Energy efficiency related item means any repair, replacement, improvement, or modification to real property that is necessary or desirable in conjunction with an energy efficiency improvement, including, but not limited to, structural support improvements and the repair or replacement of any building components, paved surfaces, or fixtures disrupted or altered by the installation of an energy efficiency improvement;

(5) Energy project means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system;

(6) Municipality means any county, city, or village in this state;

(7) Qualifying property means any of the following types of property located within a municipality:

(a) Agricultural property;

(b) Commercial property, including multifamily residential property comprised of more than four dwelling units;

(c) Industrial property; or

(d) Single-family residential property, which may include up to four dwelling units;

(8)(a) Renewable energy resource means a resource that naturally replenishes over time and that minimizes the output of toxic material in the conversion to energy. Renewable energy resource includes, but is not limited to, the following:

(i) Nonhazardous biomass;

(ii) Solar and solar thermal energy;

(iii) Wind energy;

(iv) Geothermal energy;

(v) Methane gas captured from a landfill or elsewhere;

(vi) Photovoltaic systems; and

(vii) Cogeneration and trigeneration systems; and

(b) Renewable energy resource does not include petroleum, nuclear power, natural gas, coal, or hazardous biomass; and

(9) Renewable energy system means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator.

Source: Laws 2016, LB1012, § 3; R.S.Supp.,2016, § 18-3203; Laws 2017, LB625, § 3.

13-3204 Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; resolution; contents; assessment contracts.

(1) Pursuant to the procedures provided in this section, a municipality may, from time to time, create one or more clean energy assessment districts. Such districts may be separate, overlapping, or coterminous and may be created anywhere within the municipality or its extraterritorial zoning jurisdiction, except that a county shall not create a district that includes any area within the corporate boundaries or extraterritorial zoning jurisdiction of any city or village located in whole or in part within such county. The governing body of the municipality shall be the governing body for any district so created.

(2) Prior to creating any clean energy assessment district, the municipality shall hold a public hearing at which the public may comment on the creation of such district. Notice of the public hearing shall be given by publication in a legal newspaper in or of general circulation in the municipality at least ten days prior to the hearing.

(3) After the public hearing, the municipality may create a clean energy assessment district by ordinance or, for counties, by resolution. The ordinance or resolution shall include:

(a) A finding that the financing of energy projects is a valid public purpose;

(b) A contract form to be used for assessment contracts between the municipality, the owner of the qualifying property, and, if applicable, a third-party lender governing the terms and conditions of financing and annual assessments;

(c) Identification of an official authorized to enter into assessment contracts on behalf of the municipality;

(d) An application process and eligibility requirements for financing energy projects;

(e) An explanation of how annual assessments will be made and collected;

(f) For energy projects involving residential property, a requirement that any interest rate on assessment installments must be a fixed rate;

(g) For energy projects involving residential property, a requirement that the repayment period for assessments must be according to a fixed repayment schedule;

(h) Information regarding the following, to the extent known, or procedures to determine the following in the future:

(i) Provisions for an adequate debt service reserve fund created under section 13-3209, if applicable;

(ii) Provisions for an adequate loss reserve fund created under section 13-3208; and

(iii) Any application, administration, or other program fees to be charged to owners participating in the program that will be used to finance costs incurred by the municipality as a result of the program;

(i) A requirement that the term of the annual assessments not exceed the weighted average useful life of the energy project paid for by the annual assessments;

(j) A requirement that any energy efficiency improvement that is not permanently affixed to the qualifying property upon which an annual assessment is imposed to repay the cost of such energy efficiency improvement must be conveyed with the qualifying property if a transfer of ownership of the qualifying property occurs;

(k) A requirement that, prior to the effective date of any contract that binds the purchaser to purchase qualifying property upon which an annual assessment is imposed, the owner shall provide notice to the purchaser that the purchaser assumes responsibility for payment of the annual assessment as provided in subdivision (3)(d) of section 13-3205;

(l) Provisions for marketing and participant education;

(m) A requirement that after the energy project is completed, the municipality shall obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended; and

(n) A requirement that the clean energy assessment district, with respect to single-family residential property, comply with the Property Assessed Clean Energy Act and with directives or guidelines issued by the Federal Housing Administration and the Federal Housing Finance Agency on or after January 1, 2016, relating to property assessed clean energy financing.

Source: Laws 2016, LB1012, § 4; R.S.Supp.,2016, § 18-3204; Laws 2017, LB625, § 4.

13-3205 Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.

(1) After passage of an ordinance or resolution under section 13-3204, a municipality may enter into an assessment contract with the record owner of qualifying property within a clean energy assessment district and, if applicable, with a third-party lender to finance an energy project on the qualifying property. The costs financed under the assessment contract may include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the owner pursuant to the installation. The assessment contract shall provide for the repayment of all such costs through annual assessments upon the qualifying property benefited by the energy project. A municipality may not impose an annual assessment under the Property Assessed Clean Energy Act unless such annual assessment is part of an assessment contract entered into under this section.

(2) Before entering into an assessment contract with an owner and, if applicable, a third-party lender under this section, the municipality shall verify:

(a) In all cases involving qualifying property other than single-family residential property, that the owner has obtained an acknowledged and verified written consent and subordination agreement executed by each mortgage holder or trust deed beneficiary stating that the mortgagee or beneficiary consents to the imposition of the annual assessment and that the priority of the mortgage or trust deed is subordinated to the PACE lien established in section 13-3206. The consent and subordination agreement shall be in a form and substance acceptable to each mortgagee or beneficiary and shall be recorded in the office of the register of deeds of the county in which the qualifying property is located;

(b) That there are no delinquent taxes, special assessments, water or sewer charges, or any other assessments levied on the qualifying property; that there are no involuntary liens, including, but not limited to, construction liens, on the qualifying property; and that the owner of the qualifying property is current on all debt secured by a mortgage or trust deed encumbering or otherwise securing the qualifying property;

(c) That there are no delinquent annual assessments on the qualifying property which were imposed to pay for a different energy project under the Property Assessed Clean Energy Act; and

(d) That there are sufficient resources to complete the energy project and that the estimated economic benefit, including, but not limited to, energy cost savings, maintenance cost savings, and other property operating savings expected from the energy project during the financing period, is equal to or greater than the principal cost of the energy project.

(3) Upon completion of the verifications required under subsection (2) of this section, an assessment contract may be executed by the municipality, the owner of the qualifying property, and, if applicable, a third-party lender and shall provide:

(a) A description of the energy project, including the estimated cost of the energy project and a description of the estimated savings prepared in accordance with standards acceptable to the municipality;

(b) A mechanism for:

(i) Verifying the final costs of the energy project upon its completion; and

(ii) Ensuring that any amounts advanced, financed, or otherwise paid by the municipality toward the costs of the energy project will not exceed the final cost of the energy project;

(c) An agreement by the property owner to pay annual assessments for a period not to exceed the weighted average useful life of the energy project;

(d) A statement that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall run with the land and be obligations upon future owners of the qualifying property; and

(e) An acknowledgment that no subdivision of qualifying property subject to the assessment contract shall be valid unless the assessment contract or an amendment to such contract divides the total annual assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

(4) The total annual assessments levied against qualifying property under an assessment contract shall not exceed the sum of the cost of the energy project, including any energy audits or inspections or portion thereof financed by the municipality, plus such administration fees, interest, and other financing costs reasonably required by the municipality.

(5) Nothing in the Property Assessed Clean Energy Act shall be construed to prevent a municipality from entering into more than one assessment contract with respect to a single parcel of real property so long as each assessment contract relates to a separate energy project and subdivision (2)(c) of this section is not violated.

(6) The municipality shall provide a copy of each signed assessment contract to the county assessor and register of deeds of the county in which the qualifying property is located, and the register of deeds shall record the assessment contract with the qualifying property.

(7) Annual assessments agreed to under an assessment contract shall be levied against the qualifying property and collected at the same time and in the same manner as property taxes are levied and collected, except that an assessment contract for qualifying property other than single-family residential property may allow third-party lenders to collect annual assessments directly from the owner of the qualifying property in a manner prescribed in the assessment contract. Any third-party lender collecting annual assessments directly from the owner of the qualifying property shall notify the municipality within three business days if an annual assessment becomes delinquent.

(8) Collection of annual assessments shall only be sought from the original owners or subsequent purchasers of qualifying property subject to an assessment contract.

Source: Laws 2016, LB1012, § 5; R.S.Supp.,2016, § 18-3205; Laws 2017, LB625, § 5.

13-3206 Annual assessment; PACE lien; notice of lien; contents; priority; sale of property; use of proceeds; release of lien; recording.

(1)(a) For qualifying property other than single-family residential property, any annual assessment imposed on such qualifying property that becomes delinquent, including any interest on the annual assessment and any penalty, shall constitute a PACE lien against the qualifying property on which the

annual assessment is imposed until the annual assessment, including any interest and penalty, is paid in full. Any annual assessment that is not paid within the time period set forth in the assessment contract shall be considered delinquent. The municipality shall, within fourteen days after an annual assessment becomes delinquent, record a notice of such lien in the office of the register of deeds of the county in which the qualifying property is located.

(b) For qualifying property that is single-family residential property, all annual assessments imposed on such qualifying property, including any interest on the annual assessments and any penalty, shall, upon the initial annual assessment, constitute a PACE lien against the qualifying property on which the annual assessments are imposed until all annual assessments, including any interest and penalty, are paid in full. Any annual assessment that is not paid within the time period set forth in the assessment contract shall be considered delinquent. The municipality shall, upon imposition of the initial annual assessment, record a notice of such lien in the office of the register of deeds of the county in which the qualifying property is located.

(2) A notice of lien filed under this section shall, at a minimum, include:

(a) The amount of funds disbursed or to be disbursed pursuant to the assessment contract;

(b) The names and addresses of the current owners of the qualifying property subject to the annual assessment;

(c) The legal description of the qualifying property subject to the annual assessment;

(d) The duration of the assessment contract; and

(e) The name and address of the municipality filing the notice of lien.

(3) The PACE lien created under this section shall:

(a) For qualifying property that is single-family residential property, (i) be subordinate to all liens on the qualifying property recorded prior to the time the notice of the PACE lien is recorded, (ii) be subordinate to a first mortgage or trust deed on the qualifying property recorded after the notice of the PACE lien is recorded, and (iii) have priority over any other lien on the qualifying property recorded after the notice of the PACE lien is recorded; and

(b) For qualifying property other than single-family residential property and subject to the requirement in subdivision (2)(a) of section 13-3205 to obtain and record an executed consent and subordination agreement, have the same priority and status as real property tax liens.

(4)(a) Notwithstanding any other provision of law, in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family residential property, the holders of any mortgages, trust deeds, or other liens, including delinquent annual assessments secured by PACE liens, shall receive proceeds in accordance with the priorities established under subdivision (3)(a) of this section. In the event there are insufficient proceeds from such a sale, from the loss reserve fund established pursuant to section 13-3208, or from any other means to satisfy the delinquent annual assessments, such delinquent annual assessments shall be extinguished. Any annual assessment that has not yet become delinquent shall not be accelerated or extinguished in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family

residential property. Upon the transfer of ownership of qualifying property that is single-family residential property, including a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed, the nondelinquent annual assessments shall continue as a lien on the qualifying property, subject to the priorities established under subdivision (3)(a) of this section.

(b) Upon the transfer of ownership of qualifying property other than single-family residential property, including a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed, the obligation to pay annual assessments shall run with the qualifying property.

(5)(a) For qualifying property other than single-family residential property, when the delinquent annual assessment, including any interest and penalty, is paid in full, a release of the PACE lien shall be recorded in the office of the register of deeds of the county in which the notice of the PACE lien was recorded.

(b) For qualifying property that is single-family residential property, when all annual assessments, including any interest and penalty, are paid in full, a release of the PACE lien shall be recorded in the office of the register of deeds of the county in which the notice of the PACE lien was recorded.

(6) If the holder or loan servicer of any existing mortgage or trust deed that encumbers or that is otherwise secured by the qualifying property has established a payment schedule or escrow account to accrue property taxes or insurance, such holder or loan servicer may increase the required monthly payment, if any, by an amount necessary to pay the annual assessment imposed under the Property Assessed Clean Energy Act.

Source: Laws 2016, LB1012, § 6; R.S.Supp.,2016, § 18-3206; Laws 2017, LB625, § 6.

13-3207 Municipality; raise capital; sources; bonds; issuance; statutory lien; vote; when required.

(1) A municipality may raise capital to finance energy projects undertaken pursuant to an assessment contract entered into under the Property Assessed Clean Energy Act. Such capital may come from any of the following:

(a) The sale of bonds;

(b) Amounts to be advanced by the municipality through funds available to it from any other source; or

(c) Third-party lending.

(2) Bonds issued under subsection (1) of this section shall not be general obligations of the municipality, shall be nonrecourse, and shall not be backed by the full faith and credit of the issuer, the municipality, or the state, but shall only be secured by payments of annual assessments by owners of qualifying property within the clean energy assessment district or districts specified who are subject to an assessment contract under section 13-3205.

(3) Any single bond issuance by a municipality for purposes of the Property Assessed Clean Energy Act shall not exceed five million dollars without a vote of the registered voters of such municipality.

(4) A pledge of annual assessments, funds, or contractual rights made in connection with the issuance of bonds by a municipality constitutes a statutory

lien on the annual assessments, funds, or contractual rights so pledged in favor of the person or persons to whom the pledge is given without further action by the municipality. The statutory lien is valid and binding against all other persons, with or without notice.

(5) Bonds of one series issued under the Property Assessed Clean Energy Act may be secured on a parity with bonds of another series issued by the municipality pursuant to the terms of a master indenture or master resolution entered into or adopted by the municipality.

(6) Bonds issued under the act, and interest payable on such bonds, are exempt from all taxation by this state and its political subdivisions.

(7) Bonds issued under the act further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.

(8) The Property Assessed Clean Energy Act shall not be used to finance an energy project on qualifying property owned by a municipality or any other political subdivision of the State of Nebraska without having first been approved by a vote of the registered voters of such municipality or political subdivision owning the qualifying property. Such vote shall be taken at a special election called for such purpose or at an election held in conjunction with a statewide or local primary or general election.

Source: Laws 2016, LB1012, § 7; R.S.Supp.,2016, § 18-3207; Laws 2017, LB625, § 7.

13-3208 Loss reserve fund; created; funding; use.

(1) A municipality that has created a clean energy assessment district shall create a loss reserve fund for:

(a) The payment of any delinquent annual assessments for qualifying property that is single-family residential property in the event that there is a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed of such qualifying property and the proceeds resulting from such a sale are, after all superior liens have been satisfied, insufficient to pay the delinquent annual assessments. Payments from the loss reserve fund under this subdivision may only be made with respect to delinquent annual assessments imposed upon qualifying property that is single-family residential property, with no more than one such payment to be made for the same qualifying property; and

(b) The payment of annual assessments imposed upon qualifying property that is single-family residential property subsequent to a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed in which the mortgagee or beneficiary becomes the owner of such qualifying property. Payments from the loss reserve fund under this subdivision may only be made with respect to annual assessments imposed upon qualifying property that is single-family residential property subsequent to the date on which the mortgagee or beneficiary became the owner of such qualifying property and until the qualifying property is conveyed by the mortgagee or beneficiary, with no more than one such payment to be made for the same qualifying property.

(2) The loss reserve fund may be funded by state and federal sources, the proceeds of bonds issued pursuant to the Property Assessed Clean Energy Act, third-party capital, and participating property owners. The loss reserve fund shall only be used to provide payment of annual assessments as provided in this section and for the costs of administering the loss reserve fund.

(3) The loss reserve fund shall not be funded by, and payment of annual assessments and costs of administering the loss reserve fund shall not be made from, the general fund of any municipality.

Source: Laws 2016, LB1012, § 8; R.S.Supp.,2016, § 18-3208; Laws 2017, LB625, § 8.

13-3209 Debt service reserve fund.

A municipality that has created a clean energy assessment district may create a debt service reserve fund to be used as security for capital raised under section 13-3207.

Source: Laws 2016, LB1012, § 9; R.S.Supp.,2016, § 18-3209; Laws 2017, LB625, § 9.

13-3210 Use of Interlocal Cooperation Act; public hearing; contract authorized.

(1) Two or more municipalities may enter into an agreement pursuant to the Interlocal Cooperation Act for the creation, administration, or creation and administration of clean energy assessment districts.

(2) If the creation of clean energy assessment districts is implemented jointly by two or more municipalities, a single public hearing held jointly by the cooperating municipalities is sufficient to satisfy the requirements of section 13-3204.

(3) A municipality or municipalities may contract with a third party for the administration of clean energy assessment districts.

Source: Laws 2016, LB1012, § 10; R.S.Supp.,2016, § 18-3210; Laws 2017, LB625, § 10.

Cross References

Interlocal Cooperation Act, see section 13-801.

13-3211 Report; contents.

(1) Any municipality that creates a clean energy assessment district under the Property Assessed Clean Energy Act shall, on or before January 31 of each year, electronically submit a report to the Urban Affairs Committee of the Legislature on the following:

(a) The number of clean energy assessment districts in the municipality and their location;

(b) The total dollar amount of energy projects undertaken pursuant to the act;

(c) The total dollar amount of outstanding bonds issued under the act;

(d) The total dollar amount of annual assessments collected as of the end of the most recently completed calendar year and the total amount of annual assessments yet to be collected pursuant to assessment contracts signed under the act; and

(e) A description of the types of energy projects undertaken pursuant to the act.

(2) If a clean energy assessment district is administered jointly by two or more municipalities, a single report submission by the cooperating municipalities is sufficient to satisfy the requirements of subsection (1) of this section.

Source: Laws 2016, LB1012, § 11; R.S.Supp.,2016, § 18-3211; Laws 2017, LB625, § 11.

CHAPTER 14

CITIES OF THE METROPOLITAN CLASS

Article.

1. General Powers. 14-101 to 14-137.
3. Public Improvements.
 - (c) Sewerage, Drainage, Sprinkling, Paving Repair, and Contractors' Bonds. 14-363, 14-364.
 - (g) Streets, Sidewalks, and Highways. 14-392 to 14-3,107.
4. City Planning, Zoning. 14-407 to 14-420.
5. Fiscal Management, Revenue, and Finances.
 - (c) Street Improvement; Bonds; Grading; Assessments. 14-537.
 - (g) Pension Board. 14-567.
6. Police Department.
 - (a) General Provisions. 14-607.
17. Parking Facilities.
 - (c) Offstreet Parking. 14-1733.
18. Metropolitan Transit Authority. 14-1805.01.
21. Public Utilities. 14-2102 to 14-2139.

ARTICLE 1

GENERAL POWERS

Section

- | | |
|------------|---------------------------------------------------------------------------------------------------------------|
| 14-101. | Cities of the metropolitan class, defined; population required; general powers. |
| 14-101.01. | Declaration as city of the metropolitan class; when. |
| 14-102. | Additional powers. |
| 14-103. | City council; powers; health regulation; jurisdiction. |
| 14-105. | City council; powers; drainage of lots; duty of owner; special assessment. |
| 14-109. | City council; powers; occupation and license taxes; motor vehicle fee; conditions; limitations. |
| 14-117. | Corporate limits; how fixed; annexation of cities or villages; limitation; powers and duties of city council. |
| 14-137. | Ordinances; how enacted. |

14-101 Cities of the metropolitan class, defined; population required; general powers.

All cities in this state which have attained a population of three hundred thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be cities of the metropolitan class and governed by this act. Whenever the words this act occur in sections 14-101 to 14-138, 14-201 to 14-229, 14-360 to 14-376, 14-501 to 14-556, 14-601 to 14-609, 14-702 to 14-704, and 14-804 to 14-816, they shall be construed as referring exclusively to those sections. The population of a city of the metropolitan class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city. Each city of the metropolitan class shall be a body corporate and politic and shall have power (1) to sue and be sued, (2) to purchase, lease, lease with option to buy, acquire by gift or devise, and hold real and personal property within or without the limits of the city for the use of the city, and real estate sold for taxes, (3) to

sell, exchange, lease, and convey any real or personal estate owned by the city, in such manner and upon such terms as may be to the best interests of the city, except that real estate acquired for state armory sites shall be conveyed strictly in the manner provided in sections 18-1001 to 18-1006, (4) to make all contracts and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate or administrative powers, and (5) to exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and city council of such city except when otherwise specially provided.

Source: Laws 1921, c. 116, art. I, § 1, p. 398; C.S.1922, § 3488; C.S.1929, § 14-101; Laws 1935, Spec. Sess., c. 10, § 2, p. 72; Laws 1941, c. 130, § 8, p. 494; C.S.Supp.,1941, § 14-101; R.S.1943, § 14-101; Laws 1947, c. 50, § 1, p. 170; Laws 1961, c. 58, § 1, p. 215; Laws 1963, c. 43, § 1, p. 218; Laws 1965, c. 85, § 1, p. 327; Laws 1967, c. 40, § 1, p. 170; Laws 1993, LB 726, § 3; Laws 2017, LB113, § 4.

14-101.01 Declaration as city of the metropolitan class; when.

Whenever any city of the primary class shall attain a population of three hundred thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of such city shall certify such fact to the Secretary of State, who upon the filing of such certificate shall by proclamation declare such city to be of the metropolitan class.

Source: Laws 2017, LB113, § 5.

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

(1) To levy any tax or special assessment authorized by law;

Corporate seal.

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as required by law;

Regulation of public health.

(3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

(4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and the discharge of firearms, fireworks, or explosives of any description within the city, other than the discharge of firearms at a shooting range pursuant to the Nebraska Shooting Range Protection Act;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, to provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards when in the judgment of the mayor and council such trimming is made necessary to properly light such street or boulevard or to furnish proper police protection and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city or its three-mile zoning jurisdiction to be cut and destroyed so as to abate any nuisance occasioned thereby, to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or its three-mile zoning jurisdiction and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish, maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal, disposal, or recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this section, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by

fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of steam or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location for such lampposts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien

upon any real estate belonging to such company and lying within such city and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs and railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including, but not limited to, receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any city of the metropolitan class shall acquire, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, to implement and enforce an air pollution control program within the corporate limits of the city under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945;

Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59; Laws 2008, LB806, § 1; Laws 2009, LB430, § 1; Laws 2009, LB503, § 11; Laws 2015, LB266, § 1.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

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 Shooting Range Protection Act, see section 37-1301.

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

State Lottery Act, see section 9-801.

14-103 City council; powers; health regulation; jurisdiction.

The council shall have power to define, regulate, suppress and prevent nuisances. The council may create a board of health in cases of a general epidemic or may cooperate with the boards of health provided by the laws of this state. The council may provide rules and regulations for the care, treatment, regulation, and prevention of all contagious and infectious diseases, for the regulation of all hospitals, dispensaries, and places for the treatment of the sick, for the sale of dangerous drugs, for the regulation of cemeteries, and the burial of the dead. The jurisdiction of the council in enforcing the foregoing regulations shall extend over such city and within its three-mile zoning jurisdiction.

Source: Laws 1921, c. 116, art. I, § 3, p. 406; C.S.1922, § 3490; C.S.1929, § 14-103; R.S.1943, § 14-103; Laws 2015, LB266, § 2.

14-105 City council; powers; drainage of lots; duty of owner; special assessment.

The city council may require any and all lots or pieces of ground within the city to be drained, filled, or graded, and upon the failure of the owners of such lots or pieces of ground to comply with such requirements, after thirty days' notice in writing, the council may cause the lots or pieces of ground to be drained, filled, or graded, and the cost and expense thereof shall be levied upon the property so filled, drained, or graded and shall be equalized, assessed, and collected as a special assessment.

Source: Laws 1921, c. 116, art. I, § 5, p. 407; C.S.1922, § 3492; C.S.1929, § 14-105; R.S.1943, § 14-105; Laws 2015, LB361, § 1.

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. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a

reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. 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; Laws 2012, LB745, § 2; Laws 2014, LB474, § 1.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

14-117 Corporate limits; how fixed; annexation of cities or villages; limitation; powers and duties of city council.

The corporate limits of any city of the metropolitan class shall be fixed and determined by ordinance by the city council. The city council of any city of the metropolitan class may at any time extend the corporate limits of such city over any contiguous or adjacent lands, lots, tracts, streets, or highways, such distance as may be deemed proper in any direction, and may include, annex, merge, or consolidate with such city of the metropolitan class, by such extension of its limits, any adjoining city of the first class having a population of less than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or any adjoining city of the second class or village. Any other laws and limitations defining the boundaries of cities or villages or the increase of area or extension of limits thereof shall not apply to lots, lands, cities, or villages annexed, consolidated, or merged under this section.

Source: Laws 1921, c. 116, art. I, § 16, p. 412; C.S.1922, § 3504; C.S. 1929, § 14-117; R.S.1943, § 14-117; Laws 1998, LB 611, § 1; Laws 2017, LB113, § 6.

14-137 Ordinances; how enacted.

The enacting clause of all ordinances in a city of the metropolitan class shall be as follows: Be it ordained by the city council of the city of All ordinances of the city shall be passed pursuant to such rules and regulations as the city council may prescribe. Upon the passage of all ordinances the yeas and nays shall be entered upon the record of the city council, and a majority of the votes of all the members of the city council shall be necessary to their passage. No ordinance shall be passed within a week after its introduction, except the general appropriation ordinances for salaries and wages. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the city council vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory or the redrawing of boundaries for city council election districts or wards.

Source: Laws 1921, c. 116, art. I, § 36, p. 418; C.S.1922, § 3524; C.S. 1929, § 14-137; R.S.1943, § 14-137; Laws 2018, LB865, § 1. Effective date July 19, 2018.

ARTICLE 3

PUBLIC IMPROVEMENTS

(c) SEWERAGE, DRAINAGE, SPRINKLING, PAVING REPAIR, AND CONTRACTORS' BONDS

- Section 14-363. Street sprinkling or armor-coating districts; creation; contracts; bids; special assessments; collection.
 - 14-364. Paving repair plant; establishment; cost of operation; payment.
- (g) STREETS, SIDEWALKS, AND HIGHWAYS
- 14-392. Streets; improvements; assessment of cost.

Section

- 14-398. Streets; change of grade; special assessment; how determined.
- 14-3,102. Streets; improvements; notice; service; protest; effect; special assessment.
- 14-3,103. Sidewalks; construction or repair; required, when; assessment of cost; equalization.
- 14-3,106. Sidewalks; construction or repair; special assessment; failure of owner; effect.
- 14-3,107. Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.

(c) SEWERAGE, DRAINAGE, SPRINKLING, PAVING
REPAIR, AND CONTRACTORS' BONDS

14-363 Street sprinkling or armor-coating districts; creation; contracts; bids; special assessments; collection.

The city council may provide for the sprinkling or armor coating of the streets of the city and, for the purpose of accomplishing such work, may by ordinance create suitable districts to be designated sprinkling or armor-coating districts and may order and direct the work, including preparatory grading, to be done upon any or all of the streets in the districts. The work shall be done upon contract in writing let upon advertisement to the lowest responsible bidder. Such advertisement shall specify the district or districts proposed to be so worked, especially describing such district or districts, and bids shall be made and contracts let with reference to such district or districts so specified. For the purpose of paying the cost of the work contemplated and contracted for, the city council may levy and assess the cost upon all lots, lands, and real estate in the district, such tax or assessment to be equal and uniform upon all front footage or property within or abutting upon the streets within the district so created. The assessment shall be a lien upon all such lots, lands, and real estate and shall be enforced and collected as a special assessment.

Source: Laws 1921, c. 116, art. III, § 54, p. 456; C.S.1922, § 3607; C.S.1929, § 14-355; R.S.1943, § 14-363; Laws 1991, LB 745, § 1; Laws 2015, LB361, § 2.

14-364 Paving repair plant; establishment; cost of operation; payment.

The city council may establish and maintain a paving repair plant and may pave or repair paving. The cost of such repairs may be paid from the funds of the city or may be assessed upon the abutting property, except that the cost may be assessed against abutting property only following the creation of a paving repair or repaving district established and assessed as a special assessment in the same manner provided for a sprinkling or armor-coating district by section 14-363. The assessable paving repairs shall be only those made with asphaltic concrete on streets in previously developed areas which were not constructed to city permanent design standards.

Source: Laws 1921, c. 116, art. III, § 55, p. 456; C.S.1922, § 3608; C.S.1929, § 14-356; R.S.1943, § 14-364; Laws 1991, LB 745, § 2; Laws 2015, LB361, § 3.

(g) STREETS, SIDEWALKS, AND HIGHWAYS

14-392 Streets; improvements; assessment of cost.

For the purpose of covering in whole or in part the costs of any of the improvements and costs incident thereto, authorized in sections 14-384 to

14-3,127, including grading done in combination with any other improvements, the city may assess the property within the improvement district or the property benefited by change of grade or grading when not made in combination with other improvements, to the full extent of the special benefits thereby conferred upon the respective lots, tracts, and parcels of land, or if the city council finds that there are common benefits enjoyed by the public at large without reference to the ownership of property abutting or adjacent to the improvement or improvements, or that there is a common benefit to the property embraced within the district or districts, the city may assess the costs of such improvement or improvements against all the property included in such district or districts, according to such rules as the city council sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of the improvement or improvements. All such assessments shall be equalized, levied, and collected as special assessments.

Source: Laws 1959, c. 36, § 9, p. 199; Laws 1969, c. 60, § 5, p. 367; Laws 2015, LB361, § 4.

14-398 Streets; change of grade; special assessment; how determined.

Under the methods provided in sections 14-384 to 14-3,127 to grade streets, boulevards, highways, main thoroughfares, controlled-access facilities, connecting links, major traffic streets, alleys, and parts thereof, any number of intersecting and connecting streets reasonably required and proper and necessary to the better and improved use of the streets may be authorized to be graded in one and the same proceeding. The cost thereof as provided in sections 14-384 to 14-3,127 may be assessed upon property specially benefited as a special assessment. In such instances, in determining the sufficiency of either an authorized protest or petition, the total frontage of taxable property on all sides on all of the streets to be graded shall be taken into consideration.

Source: Laws 1959, c. 36, § 15, p. 201; Laws 2015, LB361, § 5.

14-3,102 Streets; improvements; notice; service; protest; effect; special assessment.

Whenever it is desired to make any improvement or improvements authorized in section 14-385, where the costs of such improvement or improvements are to be assessed against the adjacent and abutting property benefited thereby, and no petition has been filed therefor in accordance with section 14-391, the city for that purpose may propose such improvement or improvements stating the specific character of the improvement or improvements thus to be made. The city shall cause to be published in the official newspaper a brief notice of such proposal stating the character of the improvement or improvements proposed thereby, and shall give additional notice to the property owners in the district or districts, or proposed district or districts, as required by section 25-520.01. If within thirty days thereafter the owners of fifty-one percent of the taxable property abutting upon the street or streets, or part or parts thereof proposed to be improved protest against such project, such work shall not be done. In the absence of such protest, the city shall be authorized to proceed with the work as proposed. The cost and expense thereof, as provided by law, may be assessed against the property within the district or districts specially benefited to the extent of such benefits as a special assessment. Where assessment against the property within the district or districts specially benefited is

not made, or where the improvement or improvements are on a main thoroughfare, major traffic street, or connecting link, or made pursuant to sections 14-3,103 to 14-3,106, this section shall not apply.

Source: Laws 1959, c. 36, § 19, p. 202; Laws 1963, c. 46, § 1, p. 222; Laws 1969, c. 60, § 7, p. 369; Laws 2015, LB361, § 6.

14-3,103 Sidewalks; construction or repair; required, when; assessment of cost; equalization.

The city may construct or repair sidewalks along any street or part thereof, or any boulevard or part thereof, of such material and in such manner as it deems necessary and assess the cost thereof upon abutting property. Such assessments except for temporary sidewalks and sidewalk repairs shall be equalized and levied as special assessments. The city shall cause the construction of sidewalks on at least one side of every major traffic street and main thoroughfare in the city, excluding freeways, expressways, controlled-access facilities, and other streets deemed by the city to demonstrate no or very limited demand for pedestrian use, and may assess the cost thereof upon abutting property. Such construction shall be completed within a reasonable time, based upon an annual review of construction program priorities and available funding sources.

Source: Laws 1959, c. 36, § 20, p. 203; Laws 1971, LB 237, § 2; Laws 1984, LB 992, § 1; Laws 2015, LB361, § 7.

14-3,106 Sidewalks; construction or repair; special assessment; failure of owner; effect.

In case the owner or owners shall fail to construct or repair such sidewalk as directed, the city may construct or repair such sidewalk or cause the same to be done and assess the cost thereof upon the abutting property as special assessments. Where the owner or owners of abutting property fail to keep in repair the sidewalk adjacent thereto, they shall be liable for all damages or injuries occasioned or recovered by reason of the defective or dangerous condition of such sidewalk.

Source: Laws 1959, c. 36, § 23, p. 204; Laws 2015, LB361, § 8.

14-3,107 Streets; vacation; narrow; reversion to abutting owners; improvements; assessment of benefits; vacation of minimal secondary right-of-way; procedure.

(1) Except as provided in subsection (2) of this section, the city may vacate or narrow any street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley upon petition of the owners of seventy-five percent of the taxable frontage feet abutting upon such street or alley proposed to be vacated and asking for such vacation, or the city, for purposes of construction of a controlled-access highway or to conform to a master plan of the city, may, without petition having been filed therefor, vacate any street or alley or any part thereof in the city. Whenever a street is vacated or narrowed, the part so vacated shall revert to the abutting owners on the respective sides thereof, except that if part or all of the vacated street lies within the State of Nebraska but one side or any part of the street is adjacent to the boundary of the State of Nebraska, all of the street lying within the State of Nebraska or that part lying within the State of Nebraska shall revert to the owner of the abutting property lying wholly within the State of Nebraska. The

city may open, improve, and make passable any street, highway, boulevard, main thoroughfare, controlled-access facility, connecting link, major traffic street, or alley. For purposes of this subsection, open refers to the adaptation of the surface of the street to the needs of ordinary travel but does not necessarily require the grading to an established grade. The costs of any of the improvements mentioned in this subsection, except as otherwise provided in sections 14-384 to 14-3,127, to the extent of special benefits thereby conferred, may be assessed against the property specially benefited thereby as special assessments. When the city vacates all or any portion of a street, highway, main thoroughfare, controlled-access facility, connecting link, boulevard, major traffic street, or alley pursuant to this subsection, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(2) The city may vacate any minimal secondary right-of-way in the manner described in this subsection. The city may vacate any segment of such right-of-way by ordinance without petition and without convening any committee for the purpose of determining any damages if all affected abutting properties have primary access to an otherwise open and passable public street right-of-way. An abutting property shall not be determined to have primary access if such abutting property has an existing garage and such garage is not accessible without altering or relocating such garage. Title to such vacated rights-of-way shall vest in the owners of abutting property and become a part of such property, each owner taking title to the center line of such vacated street or alley adjacent to such owner's property subject to the following: (a) There is reserved to the city the right to maintain, operate, repair, and renew sewers now existing there and (b) there is reserved to the public utilities and cable television systems the right to maintain, repair, renew, and operate installed water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances above, on, and below the surface of the ground for the purpose of serving the general public or abutting properties, including such lateral connection or branch lines as may be ordered or permitted by the city or such other utility or cable television system and to enter upon the premises to accomplish such purposes at any and all reasonable times. The city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots. For purposes of this subsection, minimal secondary right-of-way means any street or alley which either is unpaved, has substandard paving, or has pavement narrower than sixteen feet and which is a secondary means of access to or from any property abutting the portion to be vacated.

Source: Laws 1959, c. 36, § 24, p. 204; Laws 1967, c. 43, § 1, p. 173; Laws 2001, LB 483, § 2; Laws 2003, LB 97, § 1; Laws 2015, LB361, § 9.

ARTICLE 4 CITY PLANNING, ZONING

Section

14-407. Zoning; exercise of powers; planning board or official; notice to military installation; notice to neighborhood association.

Section

- 14-415. Building ordinance or regulations; enforcement; inspection; violations; penalty.
 14-419. Building regulations; within three miles of corporate limits; jurisdiction of city council; powers granted.
 14-420. Request for change in zoning; notice; requirements; failure to give; effect.

14-407 Zoning; exercise of powers; planning board or official; notice to military installation; notice to neighborhood association.

(1) A city of the metropolitan class shall exercise the powers conferred by sections 14-401 to 14-418 through such appropriate planning board or official as exists in such city.

(2) When the city is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the city shall notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the city if the city has received a written request for such notification from the military installation. The planning board shall deliver the notification to the military installation at least ten days prior to the meeting of the planning board at which the proposal is to be considered.

(3) When the city is considering the adoption or amendment of a zoning ordinance, except for an amendment that serves only to correct a misspelling or other typographical error, the city shall notify any registered neighborhood association whose area of concern is located in whole or in part within the area that will be included in such zoning ordinance. Each neighborhood association desiring to receive such notice shall register with the city the area of concern of such association and provide the name of and contact information for the individual who is to receive notice on behalf of such association and the requested manner of service, whether by email or regular, certified, or registered mail. The registration shall be in accordance with any rules adopted and promulgated by the city. The planning board shall deliver the notification to the neighborhood association (a) in the manner requested by the neighborhood association and (b) at least ten days prior to the meeting of the planning board at which the proposal is to be considered.

Source: Laws 1925, c. 45, § 7, p. 181; C.S.1929, § 14-410; R.S.1943, § 14-407; Laws 1959, c. 37, § 2, p. 212; Laws 2010, LB279, § 1; Laws 2016, LB700, § 1.

Cross References

Planning board, extraterritorial member, see sections 14-373.01 and 14-373.02.

14-415 Building ordinance or regulations; enforcement; inspection; violations; penalty.

The city, in addition to other remedies, may institute any appropriate action or proceedings to prevent an unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use of any building or structure in violation of any ordinance or regulations enacted or issued pursuant to sections 14-401 to 14-418, to restrain, correct, or abate such violation, to prevent the occupancy of the building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. The ordinance or regulations shall be enforced by the city as it may provide. In addition to and not in restriction of any other powers, the city may cause any building, structure, place, or premises to be inspected and examined and to order in writing the

remedying of any condition found to exist therein or thereat in violation of any provision of the ordinance or regulations made under authority of such sections. The owner, general agent, lessee, or tenant of a building or premises or of any part of such building or premises where a violation of any provision of the ordinance or regulations has been committed or shall exist or the general agent, architect, builder, contractor, or any other person who commits, takes part, or assists in any such violation or who maintains any building or premises in which any such violation shall exist shall be guilty of a Class IV misdemeanor for a first or second violation and a Class II misdemeanor for a third or subsequent violation, if the third or subsequent violation is committed within two years after the commission of the prior violation.

Source: Laws 1925, c. 45, § 9, p. 184; C.S.1929, § 14-412; R.S.1943, § 14-415; Laws 1959, c. 37, § 3, p. 212; Laws 2014, LB174, § 1.

14-419 Building regulations; within three miles of corporate limits; jurisdiction of city council; powers granted.

The city council, in cities of the metropolitan class, shall have the power by ordinance to regulate, within the corporate limits of the city or within three miles of the corporate limits, except as to construction on farms for farm purposes, (1) the minimum standards of construction of buildings, dwellings, and other structures, in order to provide safe and sound condition thereof for the preservation of health, safety, security, and general welfare, and as to electric wiring, heating, plumbing, pipefitting, sewer connections, ventilation, size of habitable rooms, and the method of constructing buildings, and to provide for inspection thereof and building permits, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or rundown condition or conditions, and (3) except as to the United States of America, the State of Nebraska, any county of the state, or any city or village in the state, the nature, kind, and manner of constructing streets, alleys, sidewalks, curbing or abridging curbs, driveway approaches constructed on public right-of-way, and sewers. Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

Source: Laws 1955, c. 21, § 1, p. 99; Laws 1965, c. 40, § 1, p. 233; Laws 2016, LB704, § 1.

14-420 Request for change in zoning; notice; requirements; failure to give; effect.

(1) A city of the metropolitan class shall provide written notice of any properly filed request for a change in the zoning classification of a subject property to the owners of adjacent property in the manner set out in this section.

(2) Initial notice of the proposed zoning change on the subject property shall be sent to the owners of adjacent property by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds, postmarked at least ten working days prior to the planning board public hearing on the proposed change. The initial notice shall also be provided at least ten working days prior to the hearing to any registered neighborhood association when the subject property is located within the boundary of the area of concern of such association in the manner requested by

the association. Each neighborhood association desiring to receive such notice shall register with the city the area of concern of such association and provide the name of and contact information for the individual who is to receive notice on behalf of such association and the requested manner of service, whether by email or regular, certified, or registered mail. The registration shall be in accordance with any rules adopted and promulgated by the city. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the planning board hearing.

(3) A second notice of the proposed zoning change on the subject property shall be sent to the same owners of adjacent property who were provided with notice under subsection (2) of this section. Such notice shall be sent by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds, postmarked at least ten working days prior to the city council public hearing on the proposed change. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the city council public hearing.

(4) No additional or further notice beyond that required by subsections (2) and (3) of this section shall be necessary in the event that the scheduled planning board or city council public hearing on the proposed zoning change is adjourned, continued, or postponed until a later date.

(5) The requirements of this section shall not apply to proposed changes in the text of the zoning code itself or any proposed changes in the zoning code affecting whole classes or classifications of property throughout the jurisdiction of the city.

(6) Except for a willful or deliberate failure to cause notice to be given, no zoning decision made by a city of the metropolitan class either to accept or reject a proposed zoning change with regard to a subject property shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made. No action to challenge the validity of the acceptance or rejection of a proposed zoning change on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the zoning change by the city council.

(7) Except for a willful or deliberate failure to cause notice to be given, the city and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed zoning change by the city council.

(8) For purposes of this section:

(a) Adjacent property shall mean any piece of real property any portion of which is located within three hundred feet of the nearest boundary line of the subject property or within one thousand feet of the nearest boundary line of the subject property if the proposed zoning change involves a heavy industrial district classification;

(b) Owner shall mean the owner of a piece of adjacent property as indicated on the records of the office of the register of deeds as provided to or made available to the city no earlier than the last business day before the twenty-fifth day preceding the planning board public hearing on the zoning change proposed for the subject property; and

(c) Subject property shall mean any tract of real property located within the boundaries of a city of the metropolitan class or within the zoning jurisdiction of a city of the metropolitan class which is the subject of a properly filed request for a change of its zoning classification.

Source: Laws 1993, LB 367, § 1; Laws 2014, LB679, § 1.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

Section

14-537. Special assessments; when payable; rate of interest; collection and enforcement.

(g) PENSION BOARD

14-567. Pension board; duties; retirement plan reports.

(c) STREET IMPROVEMENT; BONDS; GRADING; ASSESSMENTS

14-537 Special assessments; when payable; rate of interest; collection and enforcement.

Special assessments for improving the streets, alleys, sewers, and sidewalks within any improvement district in a city of the metropolitan class, except where otherwise provided, shall be made in accordance with this section. The total cost of improvements shall be levied at one time upon the property and become delinquent as provided in this section. The city may require that the total amount of such assessment be paid in less than ten years if, in each year of the payment schedule, the maximum amount payable, excluding interest, is five hundred dollars. If the total amount is more than five thousand dollars, then the city shall establish a payment schedule of at least ten years but not longer than twenty years with the total amount payable in equal yearly installments, except that the minimum amount payable shall not be less than five hundred dollars per year, excluding interest. The first installment shall be due and delinquent fifty days from the date of levy, the second, one year from date of levy, and a like installment shall be due and delinquent annually thereafter until all such installments are paid. Each of the installments except the first shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of levy until the installment becomes delinquent and, after the installment becomes delinquent, shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable in advance, as in other cases of special assessments. Such special assessments shall also be collected and enforced as in other cases of special assessments.

Source: Laws 1921, c. 116, art. IV, § 25, p. 482; C.S.1922, § 3651; C.S.1929, § 14-528; Laws 1933, c. 136, § 12, p. 523; C.S.Supp.,1941, § 14-528; R.S.1943, § 14-537; Laws 1959, c. 38,

§ 1, p. 214; Laws 1963, c. 48, § 1, p. 224; Laws 1980, LB 933, § 4; Laws 1981, LB 167, § 5; Laws 1991, LB 745, § 5; Laws 2015, LB361, § 10; Laws 2017, LB159, § 1.

(g) PENSION BOARD

14-567 Pension board; duties; retirement plan reports.

(1) Beginning December 31, 1998, through December 31, 2017, 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) Through December 31, 2017, if such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the pension board of a city of the metropolitan class shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the pension board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the pension board or its designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. 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 which offers investment advice or provides investment management services to the retirement plan.

(b) 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. If the pension board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the pension board. All costs of the audit shall be paid by the pension board.

Source: Laws 1998, LB 1191, § 5; Laws 1999, LB 795, § 3; Laws 2011, LB474, § 3; Laws 2014, LB759, § 4; Laws 2017, LB415, § 3.

ARTICLE 6

POLICE DEPARTMENT

(a) GENERAL PROVISIONS

Section

14-607. Police officer; reports; duties.

(a) GENERAL PROVISIONS

14-607 Police officer; reports; duties.

It shall be the duty of police officers to make a daily report to the chief of police of the time of lighting and extinguishing of all public lights and lamps upon their beats, and also any lamps that may be broken or out of repair. They shall also report to the same office any defect in any sidewalk, street, alley, or other public highway or the existence of ice or dangerous obstructions on the walks or streets, or break in any sewer, or disagreeable odors emanating from inlets to sewers, or any violation of the health laws or ordinances of the city. Suitable blanks for making such reports shall be furnished to the chief of police by the city electrician and health commissioner. Such reports shall be by the chief of police transmitted to the proper officers of the city. In case of any

violation of laws or ordinances the police officer making report shall report the facts to the appropriate prosecuting authority. They shall also perform such other duties as may be required by ordinance.

Source: Laws 1921, c. 116, art. V, § 7, p. 497; C.S.1922, § 3688; C.S. 1929, § 14-607; R.S.1943, § 14-607; Laws 2014, LB464, § 1.

ARTICLE 17

PARKING FACILITIES

(c) OFFSTREET PARKING

Section

14-1733. Offstreet parking; cost; revenue bonds; parking district assessments; gifts, leases, devises, grants, funds, agreements; conditions; procedure.

(c) OFFSTREET PARKING

14-1733 Offstreet parking; cost; revenue bonds; parking district assessments; gifts, leases, devises, grants, funds, agreements; conditions; procedure.

In order to pay the cost required by any purchase, construction, or lease of property and equipping of such facilities, or the enlargement of presently owned facilities, the city may: (1) Issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall be a lien only upon the revenue and earnings of parking facilities and onstreet parking meters. Such revenue bonds shall mature in no more than forty years and shall be sold at public or private sale. Any such revenue bonds which may be issued shall not be included in computing the maximum amount of bonds which the issuing city of the metropolitan class may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. The city may pledge the revenue from any facility or parking meters as security for the bonds; (2) upon an initiative petition of the majority of the record owners of taxable property included in a proposed parking district, create, by ordinance, parking districts and delineate the boundaries thereof. If the city council finds that there are common benefits enjoyed by the public at large without reference to the ownership of property, or that there is a common benefit to the property encompassed within a parking district or districts, the city may assess the costs of such improvement or improvements as special assessments against all the property included in such district or districts, according to such rules as the city council, sitting as a board of equalization, shall adopt for the distribution or adjustment of the costs of such improvement or improvements. All such special assessments shall be equalized, levied, and collected as special assessments. Special assessments levied pursuant to this section shall be due, payable, and bear interest as the city council shall determine by ordinance. Installment payments shall not be allowed for any period in excess of twenty years; or (3) use, independently or together with revenue derived pursuant to subdivision (1) or (2) of this section, gifts, leases, devises, grants, federal or state funds, or agreements with other public entities.

No real property shall be included in any parking district created pursuant to this section when the zoning district in which such property is located is a residential zoning district or a district where the predominant type of land use authorized is residential in nature.

Source: Laws 1971, LB 238, § 3; Laws 1977, LB 238, § 2; Laws 1979, LB 181, § 1; Laws 1980, LB 703, § 1; Laws 2015, LB361, § 11.

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, through December 31, 2017, 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) Through December 31, 2017, if such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the authority shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the authority does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the authority. All costs of the audit shall be paid by the authority. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. 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 which offers investment advice or provides investment management services to the retirement plan.

(b) 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. If the authority does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the authority. All costs of the audit shall be paid by the authority.

Source: Laws 1998, LB 1191, § 8; Laws 1999, LB 795, § 4; Laws 2011, LB474, § 4; Laws 2014, LB759, § 5; Laws 2017, LB415, § 4.

ARTICLE 21

PUBLIC UTILITIES

Section

- 14-2102. Board of directors; qualifications; election; outside member.
- 14-2103. Board of directors; territory outside city; participation in election; filings; where made.
- 14-2109. Utilities district; personnel; duties; salary.
- 14-2110. Utilities district; employees; removal.
- 14-2111. Utilities district; employees; retirement and other benefits; terms and conditions; reports.
- 14-2113. Board of directors; natural gas and water supply; powers; jurisdiction; relocation of facilities.
- 14-2126. Utilities district; hydrants; location; maintenance.
- 14-2138. Utilities district; payment to city of the metropolitan class; allocation.
- 14-2139. Utilities district; payment to cities or villages; allocation.

14-2102 Board of directors; qualifications; election; outside member.

(1) In each metropolitan utilities district service area, there shall be a board of directors consisting of seven members. The members shall be elected as provided in section 32-540.

(2) Registered voters within the boundaries of the district shall be registered voters of such district. A registered voter of the district shall be eligible for the

office of director subject to the special qualification of residence for the outside member, except that if the board of directors, by resolution, divides the territory of the district into election subdivisions pursuant to subsection (2) of section 32-540, a registered voter of the district shall be eligible for the office of director from the election subdivision in which he or she resides.

(3) The outside member specified in section 32-540 shall be a registered voter residing within the district but outside the corporate limits of the city of the metropolitan class for which the district was created.

In the event of the annexation of the area within which the outside member resides, he or she may continue to serve as the outside member until the expiration of the term of office for which such member was elected and until a successor is elected and qualified.

Source: Laws 1913, c. 143, § 3, p. 350; R.S.1913, § 4245; C.S.1922, § 3747; C.S.1929, § 14-1003; R.S.1943, § 14-1003; Laws 1945, c. 17, § 1, p. 121; Laws 1953, c. 22, § 1, p. 93; Laws 1961, c. 32, § 1, p. 152; Laws 1976, LB 665, § 1; Laws 1977, LB 201, § 3; R.S.1943, (1991), § 14-1003; Laws 1992, LB 746, § 2; Laws 1994, LB 76, § 477; Laws 2009, LB562, § 1; Laws 2014, LB1014, § 1.

14-2103 Board of directors; territory outside city; participation in election; filings; where made.

Whenever a metropolitan utilities district is extended to include sanitary and improvement districts, unincorporated area, towns, villages, or territory lying outside the corporate limits of cities of the metropolitan class or so extended as to include sanitary and improvement districts, unincorporated area, towns, or villages in an adjoining county or counties, then such sanitary and improvement districts, unincorporated area, towns, or villages shall have a right to participate in the nomination and in the election of members of the board of directors of the metropolitan utilities district. The election commissioner or county clerk of each of the counties in which ballots are cast pursuant to this section shall within seven days after the election transmit, by mail or otherwise, to the election commissioner of the county in which the city of the metropolitan class is located, a copy of the abstract of the votes cast for members of the board of directors. The election commissioner shall in due course deliver to the candidate receiving the highest number of votes a certificate of election as a member of the board of directors. Any and all filings for such office shall be made with the election commissioner of the county in which the city of the metropolitan class is located notwithstanding that the person wishing to file lives in a county adjoining the one in which the city of the metropolitan class is located.

Source: Laws 1921, c. 109, § 1, p. 385; C.S.1922, § 3748; C.S.1929, § 14-1004; R.S.1943, § 14-1004; Laws 1961, c. 32, § 2, p. 152; R.S.1943, (1991), § 14-1004; Laws 1992, LB 746, § 3; Laws 1994, LB 76, § 478; Laws 2014, LB1014, § 2.

14-2109 Utilities district; personnel; duties; salary.

The board of directors of a metropolitan utilities district shall at its first regular meeting appoint an individual with an official title designated by the board who shall (1) act as secretary of such board, (2) have general supervision

of the management, construction, operation, and maintenance of the utility plants and property under the jurisdiction of or owned by such metropolitan utilities district, subject to the direction of the board, (3) hold office at the pleasure of the board, (4) possess business training, executive experience, and knowledge of the development and operation of public utilities, (5) receive such compensation as the board may determine, and (6) devote his or her exclusive time to the duties of the office. The board of directors may employ or authorize the employment of such other employees and assistants as may be deemed necessary for the operation and maintenance of the utility plants under its jurisdiction and of the conduct of the affairs of the board and provide for their compensation. The compensation of the appointed individual and such employees shall be paid from funds under control of the board. In no event shall the compensation, as a salary or otherwise, of any employee or officer exceed ten thousand dollars per annum unless approved by a vote of two-thirds or more of the members of the board of directors. The record of such vote of approval, together with the names of the directors so voting, shall be made a part of the permanent records of the board.

Source: Laws 1913, c. 143, § 13, p. 356; R.S.1913, § 4255; Laws 1919, c. 33, § 2, p. 108; C.S.1922, § 3758; Laws 1923, c. 134, § 1, p. 329; C.S.1929, § 14-1014; R.S.1943, § 14-1020; Laws 1947, c. 20, § 3, p. 108; R.S.1943, (1983), § 14-1020; R.S.1943, (1991), § 14-1101.01; Laws 1992, LB 746, § 9; Laws 2001, LB 177, § 2; Laws 2007, LB207, § 1; Laws 2013, LB208, § 1.

14-2110 Utilities district; employees; removal.

No regular appointee or employee of the metropolitan utilities district, except the individual appointed in section 14-2109, who has been in its service consecutively for more than one year shall be subject to removal except upon a two-thirds vote of the full board and then only for cause which shall be stated in writing and filed with the secretary of the board at least ten days prior to a hearing preceding such removal.

Source: Laws 1913, c. 143, § 14, p. 356; R.S.1913, § 4256; 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(1), p. 180; R.S.1943, § 14-1021; R.S.1943, (1991), § 14-1021; Laws 1992, LB 746, § 10; Laws 2007, LB207, § 2; Laws 2013, LB208, § 2.

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) Beginning December 31, 1998, through December 31, 2017:

(a) 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; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the board of directors of any metropolitan utilities district shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the board of directors does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the metropolitan utilities district. All costs of the audit shall be paid by the metropolitan utilities district. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(4)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson of the board or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. 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 which offers investment advice or provides investment management services to the retirement plan.

(b) 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. If the board of directors does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the district. All costs of the audit shall be paid by the district.

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; Laws 2012, LB916, § 1; Laws 2014, LB759, § 6; Laws 2015, LB40, § 1; Laws 2017, LB415, § 5.

14-2113 Board of directors; natural gas and water supply; powers; jurisdiction; relocation of facilities.

The board of directors of the metropolitan utilities district shall have general charge, supervision, and control of all matters pertaining to the natural gas supply and the water supply of the district for domestic, mechanical, public, and fire purposes. This shall include the general charge, supervision, and control of the design, construction, operation, maintenance, and extension or improvement of the necessary plant to supply natural gas, to develop power, and to pump water. It shall have the authority to enter upon and utilize streets, alleys, and public grounds therefor upon due notice to the proper authorities controlling same, subject to the provisions of sections 39-1361 and 39-1362, except that while any permit hereafter granted by the Department of Transportation under such provisions shall not be construed to be a contract as referred to within the provisions of section 39-1304.02, such parties may separately contract in relation to relocation of facilities and reimbursement therefor. The board shall also have the power to appropriate private property required by the district for natural gas and water service, to purchase and contract for necessary materials, labor, and supplies, and to supply water and natural gas without the district upon such terms and conditions as it may deem proper. The authority and power conferred in this section upon the board of directors shall extend as far beyond the corporate limits of the metropolitan utilities district as the board may deem necessary.

Source: Laws 1913, c. 143, § 7, p. 352; R.S.1913, § 4249; C.S.1922, § 3752; C.S.1929, § 14-1008; R.S.1943, § 14-1008; Laws 1957, c. 20, § 2, p. 153; Laws 1959, c. 35, § 3, p. 193; R.S.1943, (1991), § 14-1008; Laws 1992, LB 746, § 13; Laws 2017, LB339, § 78.

14-2126 Utilities district; hydrants; location; maintenance.

The metropolitan utilities districts shall maintain free of charge the number of hydrants heretofore established for fire protection in the streets of the municipalities constituting such districts and, in addition thereto, maintain regular fire hydrants on service mains in the streets of the municipalities not now equipped therewith and also upon service mains that may hereafter be installed in such municipalities. The board of directors may adopt such rules for the placement and maintenance of such hydrants as long as such rules do not violate any rules and regulations adopted and promulgated by the Department of Health and Human Services. Intermediate hydrants or fire hydrants placed between regular hydrants shall be installed by the district at such points as may be designated and ordered by any one of the municipalities. One-half of the cost of such intermediate hydrants, connections, and installation shall be

borne by the municipality ordering the same. The district shall also lower water mains and reset hydrants at their original locations whenever necessary.

Source: Laws 1913, c. 143, § 15, p. 357; R.S.1913, § 4257; Laws 1919, c. 33, § 4, p. 109; C.S.1922, § 3760; C.S.1929, § 14-1016; Laws 1943, c. 42, § 1, p. 186; R.S.1943, § 14-1023; R.S.1943, (1991), § 14-1023; Laws 1992, LB 746, § 26; Laws 2013, LB208, § 3.

14-2138 Utilities district; payment to city of the metropolitan class; allocation.

The metropolitan utilities district shall pay to the city of the metropolitan class a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water and gas sold by such district within such city, except that until January 1, 2020, retail sales of gas shall not include the retail sale of natural gas used as vehicular fuel. Such sum shall be paid on a quarterly basis, the last quarterly payment to be made not later than the thirtieth day of January of the next succeeding year, except that annual payments to such city shall not be less than five hundred thousand dollars. Such city shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1919, c. 187, § 4, p. 421; C.S.1922, § 3774; C.S.1929, § 14-1030; Laws 1943, c. 36, § 23, p. 177; R.S.1943, § 14-1041; Laws 1945, c. 19, § 5, p. 125; Laws 1947, c. 21, § 2, p. 112; Laws 1961, c. 33, § 1, p. 153; Laws 1967, c. 47, § 1, p. 179; R.S.1943, (1991), § 14-1041; Laws 1992, LB 746, § 38; Laws 2014, LB867, § 4.

14-2139 Utilities district; payment to cities or villages; allocation.

A metropolitan utilities district shall pay to every city or village of any class, other than metropolitan, in which such district sells water or gas, or both, at retail, a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water or gas, or both, sold by such district within the city or village, except that until January 1, 2020, retail sales of gas shall not include the retail sale of natural gas used as vehicular fuel. Such sums shall be paid not later than the thirtieth day of January of the next succeeding year. Such cities or villages shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1967, c. 47, § 2, p. 179; R.S.1943, (1991), § 14-1042; Laws 1992, LB 746, § 39; Laws 2014, LB867, § 5.

CHAPTER 15

CITIES OF THE PRIMARY CLASS

Article.

1. Incorporation, Extensions, Additions, Wards, Consolidation. 15-101, 15-102.
2. General Powers. 15-202 to 15-268.
4. Council and Proceedings. 15-404.
7. Public Improvements. 15-709 to 15-718.
9. City Planning, Zoning. 15-905.
10. Pensions. 15-1017.
12. Appeals. 15-1202, 15-1203.
13. Community Development. 15-1301.

ARTICLE 1

INCORPORATION, EXTENSIONS, ADDITIONS, WARDS, CONSOLIDATION

Section

- 15-101. Cities of the primary class, defined; population required.
15-102. Declaration as city of the primary class; when.

15-101 Cities of the primary class, defined; population required.

All cities having more than one hundred thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be known as cities of the primary class. The population of a city of the primary class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

Source: Laws 1901, c. 16, § 1, p. 71; R.S.1913, § 4404; C.S.1922, § 3780; C.S.1929, § 15-101; R.S.1943, § 15-101; Laws 1947, c. 50, § 2, p. 171; Laws 1961, c. 58, § 2, p. 216; Laws 1965, c. 85, § 2, p. 328; Laws 1993, LB 726, § 4; Laws 2017, LB113, § 7.

15-102 Declaration as city of the primary class; when.

Whenever any city of the first class shall attain a population of more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of such city shall certify such fact to the Secretary of State, who upon the filing of such certificate shall by proclamation declare such city to be of the primary class.

Source: Laws 1901, c. 16, § 2, p. 71; R.S.1913, § 4405; C.S.1922, § 3781; C.S.1929, § 15-102; R.S.1943, § 15-102; Laws 1967, c. 53, § 1, p. 189; Laws 2017, LB113, § 8.

ARTICLE 2

GENERAL POWERS

Section

- 15-202. Property and occupation taxes; power to levy; limitations.
- 15-203. Occupation tax; power to levy; exemptions.
- 15-211. Lots; drainage; costs; special assessment.
- 15-241. Cemeteries; conveyance of lots.
- 15-268. Weeds; destruction and removal; procedure; special assessment.

15-202 Property and occupation taxes; power to levy; limitations.

A city of the primary class shall have power to levy taxes for general revenue purposes on all property within the corporate limits of the city taxable according to the laws of Nebraska and to levy an occupation tax on public service property or corporations in such amounts as may be proper and necessary, in the judgment of the mayor and council, for purposes of revenue. All such taxes shall be uniform with respect to the class upon which they are imposed. The occupation tax may be based upon a certain percentage of the gross receipts of such public service corporation or upon such other basis as may be determined upon by the mayor and council. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704.

Source: Laws 1901, c. 16, § 129, I, p. 126; Laws 1905, c. 16, § 11, p. 212; Laws 1907, c. 9, § 12, p. 84; R.S.1913, § 4416; C.S.1922, § 3800; C.S.1929, § 15-203; R.S.1943, § 15-202; Laws 2001, LB 329, § 13; Laws 2012, LB745, § 3; Laws 2014, LB474, § 2.

15-203 Occupation tax; power to levy; exemptions.

A city of the primary class shall have power to raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business within the limits of the city and regulate the same by ordinance except as otherwise provided in this section and in section 15-212. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. 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 such taxation as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

Source: Laws 1901, c. 16, § 129, XIV, p. 130; Laws 1905, c. 16, § 11, p. 212; R.S.1913, § 4425; C.S.1922, § 3809; C.S.1929, § 15-212; R.S.1943, § 15-203; Laws 1993, LB 121, § 131; Laws 2012, LB745, § 4; Laws 2014, LB474, § 3.

15-211 Lots; drainage; costs; special assessment.

A city of the primary class may, by ordinance, require any and all lots or pieces of ground within the city or within its three-mile zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. Upon the failure of the owners of such lots or pieces of ground to fill or drain the lots or pieces when so required, the council may cause such lots or pieces of ground to be drained or filled, and the cost and expenses thereof shall be levied upon the property so filled or drained and collected as a special assessment.

Source: Laws 1901, c. 16, § 129, XII, p. 130; R.S.1913, § 4424; C.S.1922, § 3808; C.S.1929, § 15-211; R.S.1943, § 15-211; Laws 2015, LB266, § 3; Laws 2015, LB361, § 12.

15-241 Cemeteries; conveyance of lots.

A city of the primary class may convey cemetery lots owned by such city by certificates signed by the mayor and countersigned by the clerk under seal of the city, specifying that the person to whom the same is issued is owner of the lot or lots described therein by number as laid down on such plat or map, for the purpose of interment. Such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot or lots for the sole purpose of interment under the regulations of the city council.

Source: Laws 1901, c. 16, § 129, XLI, p. 137; R.S.1913, § 4451; C.S.1922, § 3836; C.S.1929, § 15-239; R.S.1943, § 15-241; Laws 2015, LB241, § 1.

15-268 Weeds; destruction and removal; procedure; special assessment.

A city of the primary class may provide for the destruction and removal of weeds and worthless vegetation growing upon any lot or lots or lands within the corporate limits of such city or within its three-mile zoning jurisdiction or upon the streets and alleys abutting upon any lot or lots or lands, and such city may require the owner or owners of such lot or lots or lands to destroy and remove such weeds and worthless vegetation therefrom and from the streets and alleys abutting thereon. If, after five days' notice by publication, by certified United States mail, or by the conspicuous posting of the notice on the lot or land upon which the nuisance exists, the owner or owners fail, neglect, or refuse to destroy or remove the nuisance, the city, through its proper officers, shall destroy and remove the nuisance, or cause the nuisance to be destroyed or removed, from the lot or lots or lands and streets and alleys abutting thereon and shall assess the cost thereof against such lot or lots or lands as a special assessment.

Source: Laws 1915, c. 215, § 1, p. 484; C.S.1922, § 3863; C.S.1929, § 15-266; R.S.1943, § 15-268; Laws 1988, LB 973, § 1; Laws 2009, LB495, § 2; Laws 2015, LB266, § 4; Laws 2015, LB361, § 13.

ARTICLE 4
COUNCIL AND PROCEEDINGS

Section

15-404. Ordinances; enactment; amendment; procedure.

15-404 Ordinances; enactment; amendment; procedure.

All ordinances, resolutions, or orders for the appropriation or payment of money in a city of the primary class shall require for passage or adoption the concurrence of a majority of the members elected to the city council. Ordinances of a general or permanent nature shall be read by title on three different days unless the city council votes to suspend this requirement by a two-thirds vote of the members, except that such requirement shall not be suspended for any ordinance for the annexation of territory or the redrawing of boundaries for city council election districts or wards. No ordinance shall contain a subject which is not clearly expressed in its title. No ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.

Source: Laws 1901, c. 16, § 73, p. 96; R.S.1913, § 4513; C.S.1922, § 3899; C.S.1929, § 15-404; R.S.1943, § 15-404; Laws 2018, LB865, § 2.

Effective date July 19, 2018.

ARTICLE 7
PUBLIC IMPROVEMENTS

Section

15-709. Streets; improvements; utility service connections; duty of landowner; special assessment.

15-713. Curbing gutter bonds; special assessment.

15-718. Sewers and drains; construction; assessment of benefits; collection.

15-709 Streets; improvements; utility service connections; duty of landowner; special assessment.

The city council may order the owner of lots abutting on a street that is to be paved to lay sewer, gas, and water service pipes to connect mains. If the owner fails to lay such pipes, after five days' notice by publication in a newspaper of general circulation in the city, or in place thereof by personal service of such notice, as the council in its discretion may direct, the council may cause the sewer, gas, and water service pipes to be laid as part of the work of the improvement district and assess the cost thereof on the property of such owner as a special assessment. Such assessment to pay the cost of the pavement or improvements in the improvement district shall be collected and enforced as a special assessment.

Source: Laws 1901, c. 16, § 97, p. 106; Laws 1905, c. 16, § 9, p. 209; Laws 1913, c. 5, p 4, p. 61; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 209; Laws 1917, c. 94, § 1, p. 250; C.S.1922, § 3910; C.S.1929, § 15-703; R.S.1943, § 15-709; Laws 2015, LB361, § 14.

15-713 Curbing gutter bonds; special assessment.

To pay the cost of curbing and guttering public ways the city council may issue bonds called curbing gutter bonds, district No., payable in not more than twenty years or at the option of the city at any interest-paying date, and assess the cost, not exceeding the special benefits, on abutting property as special assessments. Such assessments shall become due, delinquent, draw interest, and be subject to like penalty and collected as special assessments and shall constitute a sinking fund for the payment of such bonds. No paving bonds and no curbing gutter bonds shall be sold or delivered until necessary to make payments for work done on such improvements.

Source: Laws 1901, c. 16, § 97, p. 107; Laws 1905, c. 16, § 9, p. 210; Laws 1913, c. 5, § 4, p. 60; R.S.1913, § 4524; Laws 1915, c. 82, § 1, p. 210; Laws 1917, c. 94, § 1, p. 251; C.S.1922, § 3910; C.S.1929, § 15-703; R.S.1943, § 15-713; Laws 1969, c. 51, § 24, p. 287; Laws 2015, LB361, § 15.

15-718 Sewers and drains; construction; assessment of benefits; collection.

Special assessments may be levied by the city council for the purpose of paying the cost of constructing such sewers and drains within the city. Such assessments shall be levied upon the real estate within the sewerage districts in which such sewer or drain may be, to the extent of benefits to such property by reason of such improvements. The benefits to such property shall be determined by the city council as in other cases of special assessments. All assessments made for sewerage or drainage purposes shall be levied and collected as special assessments.

Source: Laws 1901, c. 16, § 101, p. 108; Laws 1907, c. 9, § 10, p. 81; R.S.1913, § 4528; C.S.1922, § 3914; C.S.1929, § 15-707; R.S. 1943, § 15-718; Laws 1969, c. 66, § 7, p. 381; Laws 2015, LB361, § 16.

ARTICLE 9

CITY PLANNING, ZONING

Section

15-905. Building regulations; zoning; distance from city authorized; powers granted.

15-905 Building regulations; zoning; distance from city authorized; powers granted.

Every city of the primary class may regulate in the area which is within the corporate limits of the city or within three miles of the corporate limits of the city and outside of any organized city or village, except as to construction on farms for farm purposes, (1) the minimum standards of construction of buildings, dwellings, and other structures in order to provide safe and sound condition thereof for the preservation of health, safety, security, and general welfare, which standards may include regulations as to electric wiring, heating, plumbing, pipefitting, sewer connections, ventilation, size of habitable rooms, and the method of constructing buildings, dwellings, and other structures, and to provide for inspection thereof and building permits and fees for such permits, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or rundown condition or conditions, and (3) except as to the United States of America, the State of Nebraska, a county, or a village, in the area

outside of the corporate limits of the city of the primary class, the nature, kind, and manner of constructing streets, alleys, sidewalks, curbing or abridging curbs, driveway approaches constructed on or to public right-of-way, and sewage disposal facilities. Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

Source: Laws 1963, c. 57, § 3, p. 240; Laws 1965, c. 40, § 2, p. 233; Laws 2013, LB88, § 1; Laws 2016, LB704, § 2.

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) Beginning December 31, 1998, through December 31, 2017:

(a) 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; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the city council of a city of the primary class shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the city council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan, the clerk of a city of the primary class or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. 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 which offers investment advice or provides investment management services to the retirement plan.

(b) 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. If the city council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may

audit, or cause to be audited, the city. All costs of the audit shall be paid by the city.

Source: Laws 1967, c. 52, § 1, p. 188; Laws 1998, LB 1191, § 17; Laws 1999, LB 795, § 6; Laws 2011, LB474, § 6; Laws 2014, LB759, § 7; Laws 2017, LB415, § 6.

ARTICLE 12

APPEALS

Section

15-1202. Appeal; procedure; fees; bond; indigent appellant.

15-1203. City clerk; duties.

15-1202 Appeal; procedure; fees; bond; indigent appellant.

(1) The party appealing shall within thirty days after the date of the order or decision complained of (a) file a notice of appeal with the city clerk specifying the parties taking the appeal and the order or decision appealed from and serve a copy of the notice upon the city attorney and (b) deposit the fees and bond or undertaking required pursuant to subsection (2) of this section or file an affidavit pursuant to subsection (3) of this section. The notice of appeal shall serve as a praecipe for a transcript.

(2) Except as provided in subsection (3) of this section, the appellant shall:

(a) Deposit with the city clerk a docket fee of the district court for cases originally commenced in district court;

(b) Deposit with the city clerk a cash bond or undertaking with at least one good and sufficient surety approved by the city clerk, in the amount of two hundred dollars, on condition that the appellant will satisfy any judgment and costs that may be adjudged against him or her; and

(c) Deposit with the city clerk the fees for the preparation of a certified and complete transcript of the proceedings of the city relating to the order or decision appealed.

(3)(a) An appellant may file with the city clerk an affidavit alleging that the appellant is indigent. The filing of such an affidavit shall relieve the appellant of the duty to deposit any fee, bond, or undertaking required by subsection (2) of this section as a condition for the preparation of the transcript or the perfecting of the appeal by the appellant subject to the determination of the court as provided in section 15-1204. In conjunction with the filing of the petition for appeal as provided for in section 15-1204, the appellant shall file a copy of the affidavit alleging his or her indigency and the district court shall rule upon the issue of indigency prior to the consideration of any other matter relating to the appeal as provided in section 15-1204.

(b) An appellant determined to be indigent under this subsection shall not be required to deposit any fee, bond, or undertaking required by subsection (2) of this section. For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family.

(c) An appellant determined not to be indigent shall, within thirty days after the determination, deposit with the city clerk the fees and bond or undertaking required by subsection (2) of this section. The appeal shall not proceed further

until the city clerk notifies the court that the appropriate deposit has been made.

Source: Laws 1969, c. 65, § 2, p. 377; Laws 1983, LB 52, § 3; Laws 1988, LB 352, § 17; Laws 2009, LB441, § 2; Laws 2018, LB193, § 1.
Operative date July 19, 2018.

15-1203 City clerk; duties.

(1) Except as provided in subsection (2) of this section, the city clerk, on payment to him or her of the costs of the transcript, shall transmit within fifteen days to the clerk of the district court the docket fee and a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of such fee and transcript, the clerk of the district court shall file the appeal.

(2) If the appellant files an affidavit alleging that he or she is indigent pursuant to section 15-1202, the city clerk shall transmit within fifteen days to the clerk of the district court a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of the transcript, the clerk of the district court shall file the appeal.

Source: Laws 1969, c. 65, § 3, p. 378; Laws 1983, LB 52, § 4; Laws 1988, LB 352, § 18; Laws 2009, LB441, § 3; Laws 2018, LB193, § 2.
Operative date July 19, 2018.

ARTICLE 13

COMMUNITY DEVELOPMENT

Section

15-1301. Terms, defined.

15-1301 Terms, defined.

As used in sections 15-1301 to 15-1307, unless the context otherwise requires:

(1) City shall mean any city of the primary class;

(2) Federal government shall mean the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America; and

(3) Community development activity shall mean any activity authorized in the Community Development Law, construction of community facilities, conservation and rehabilitation of property, neighborhood development, code enforcement, and all of the jurisdiction and authority granted a housing authority under Chapter 71, article 15.

Source: Laws 1974, LB 825, § 1; Laws 2018, LB874, § 2.
Effective date July 19, 2018.

Cross References

Community Development Law, see section 18-2101.

CITIES OF THE FIRST CLASS

CHAPTER 16
CITIES OF THE FIRST CLASS

Article.

1. Incorporation, Extensions, Additions, Wards. 16-101 to 16-130.
2. General Powers. 16-202 to 16-253.
3. Officers, Elections, Employees. 16-302.01 to 16-327.
4. Council and Proceedings. 16-401 to 16-406.
5. Contracts and Franchises. 16-501 to 16-503.
6. Public Improvements.
 - (a) Condemnation Proceedings. 16-606, 16-607.
 - (b) Streets. 16-609 to 16-655.
 - (d) Sidewalks. 16-661 to 16-666.
 - (e) Water, Sewer, and Drainage Districts. 16-667 to 16-672.
 - (f) Storm Sewer Districts. 16-672.01 to 16-672.11.
 - (g) Public Utilities. 16-676 to 16-694.
 - (h) Parks. 16-695 to 16-697.02.
 - (i) Markets. 16-698, 16-699.
 - (j) Public Buildings. 16-6,100 to 16-6,100.05.
 - (k) Waterworks; Gas Plant. 16-6,101.
 - (l) Sanitary Sewer and Water Main Connection District. 16-6,102 to 16-6,105.
 - (m) Flood Control. 16-6,107 to 16-6,109.
7. Fiscal Management, Revenue, and Finances. 16-701 to 16-729.
8. Offstreet Parking. 16-801 to 16-810.
9. Suburban Development. 16-901 to 16-905.
10. Retirement Systems.
 - (a) Police Officers Retirement Act. 16-1002 to 16-1019.
 - (b) Firefighters Retirement. 16-1021 to 16-1038.

ARTICLE 1

INCORPORATION, EXTENSIONS, ADDITIONS, WARDS

Section

- 16-101. Cities of the first class, defined; population required.
- 16-102. City of the second class; attainment of required population; incorporation as city of the first class.
- 16-103. Reorganization as city of the first class; transitional provisions.
- 16-104. Wards; election districts; staggering of terms; procedure.
- 16-105. Wards; election precincts.
- 16-117. Annexation; powers; procedure; hearing.
- 16-119. Annexation; extraterritorial property use; continuation.
- 16-120. Annexation; inhabitants; services; when.
- 16-122. Annexation of city of the second class or village; conditions.
- 16-124. Annexation; succession to property, contracts, obligations, and choses in action.
- 16-125. Annexation; taxes, assessments, fines, licenses, fees, claims, demands; paid to and collection by city of the first class.
- 16-126. Taxes and special assessments; annexation; effect.
- 16-127. Annexation; pending actions at law or in equity; prosecution and defense by city of the first class.
- 16-128. Annexation; records, books, bonds, funds, and property; property of city of the first class; officers; termination.
- 16-129. Disconnection of property from corporate limits of city; procedure.
- 16-130. Annexation by city within county between 100,000 and 250,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.

16-101 Cities of the first class, defined; population required.

All cities having more than five thousand and not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be known as cities of the first class. The population of a city of the first class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

Source: Laws 1901, c. 18, § 1, p. 226; R.S.1913, § 4804; C.S.1922, § 3972; C.S.1929, § 16-101; R.S.1943, § 16-101; Laws 1965, c. 85, § 3, p. 328; Laws 1993, LB 726, § 5; Laws 2017, LB113, § 9.

16-102 City of the second class; attainment of required population; incorporation as city of the first class.

Whenever any city of the second class attains a population of more than five thousand inhabitants as provided by section 16-101, the mayor of such city shall certify such fact to the Secretary of State who upon the filing of such certificate shall by proclamation declare such city to be a city of the first class. Upon such proclamation being made by the Secretary of State, every officer of such city shall, within thirty days thereafter, qualify and give bond as provided by sections 16-219, 16-304, and 16-318.

Source: Laws 1901, c. 18, § 2, p. 227; R.S.1913, § 4805; C.S.1922, § 3973; C.S.1929, § 16-102; R.S.1943, § 16-102; Laws 1984, LB 1119, § 1; Laws 2016, LB704, § 3.

16-103 Reorganization as city of the first class; transitional provisions.

(1) After the proclamation under section 16-102, the city shall be governed by the laws of this state applicable to cities of the first class, except that the government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the first class.

(2) The mayor and city council members of the city of the second class shall be deemed to be the mayor and city council members of the city of the first class on the date the proclamation is issued. All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to the city of the second class at the time of its incorporation as a city of the first class shall remain in full force and effect after such incorporation until repealed or modified by the city within one year after the date of the filing of the certificate pursuant to section 16-102.

(3) For the purpose of electing city officials under the provisions of law relating to cities of the first class, the terms of office for such officials shall be established by the city council so as to conform with the intent and purpose of section 32-534.

Source: Laws 1901, c. 18, § 3, p. 227; R.S.1913, § 4806; C.S.1922, § 3974; C.S.1929, § 16-103; R.S.1943, § 16-103; Laws 1984, LB 1119, § 2; Laws 1990, LB 957, § 1; Laws 1994, LB 76, § 482; Laws 2016, LB704, § 4.

16-104 Wards; election districts; staggering of terms; procedure.

If a city of the second class becomes a city of the first class, the mayor and city council shall divide the city into not less than three wards, as compact in form and equal in population as may be, the boundaries of which shall be defined by ordinance, to take effect at the next annual city election after reorganization except as provided in section 32-553. Each ward shall constitute an election district, except that when any ward has over five hundred legal voters, the mayor and city council may divide such ward into two or more election districts. If it is necessary to establish the staggering of terms by nominating and electing council members for terms of different durations at the same elections, the candidates receiving the greatest number of votes shall be nominated and have their names placed on the general election ballot.

Source: Laws 1901, c. 18, § 9, p. 231; R.S.1913, § 4807; C.S.1922, § 3975; C.S.1929, § 16-104; R.S.1943, § 16-104; Laws 1980, LB 629, § 1; Laws 1983, LB 308, § 1; Laws 1990, LB 957, § 2; Laws 1994, LB 76, § 483; Laws 2002, LB 970, § 1; Laws 2016, LB704, § 5.

16-105 Wards; election precincts.

Precinct lines in any part of any county not under township organization, embraced within the corporate limits of a city of the first class, shall correspond with the ward lines of the city, and such precinct shall correspond in number with the ward of the city and be coextensive with the ward. When a ward is divided into election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election districts.

Source: Laws 1901, c. 18, § 10, p. 231; R.S.1913, § 4808; C.S.1922, § 3976; C.S.1929, § 16-105; R.S.1943, § 16-105; Laws 1972, LB 1032, § 101; Laws 2016, LB704, § 6.

16-117 Annexation; powers; procedure; hearing.

(1) Except as provided in sections 13-1111 to 13-1120 and 16-130 and subject to this section, the mayor and city council of a city of the first class may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of a city of the first class over any agricultural lands which are rural in character.

(2) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(3) The city council proposing to annex land under the authority of this section shall first adopt both a resolution stating that the city is proposing the annexation of the land and a plan for extending city services to the land. The resolution shall state:

(a) The time, date, and location of the public hearing required by subsection (5) of this section;

(b) A description of the boundaries of the land proposed for annexation; and

(c) That the plan of the city for the extension of city services to the land proposed for annexation is available for inspection during regular business hours in the office of the city clerk.

(4) The plan adopted by the city council shall contain sufficient detail to provide a reasonable person with a full and complete understanding of the proposal for extending city services to the land proposed for annexation. The plan shall (a) state the estimated cost impact of providing the services to such land, (b) state the method by which the city plans to finance the extension of services to the land and how any services already provided to the land will be maintained, (c) include a timetable for extending services to the land proposed for annexation, and (d) include a map drawn to scale clearly delineating the land proposed for annexation, the current boundaries of the city, the proposed boundaries of the city after the annexation, and the general land-use pattern in the land proposed for annexation.

(5) A public hearing on the proposed annexation shall be held within sixty days following the adoption of the resolution proposing to annex land to allow the city council to receive testimony from interested persons. The city council may recess the hearing, for good cause, to a time and date specified at the hearing.

(6) A copy of the resolution providing for the public hearing shall be published in a legal newspaper in or of general circulation in the city at least once not less than ten days preceding the date of the public hearing. A map drawn to scale delineating the land proposed for annexation shall be published with the resolution. A copy of the resolution providing for the public hearing shall be sent by first-class mail following its passage to the school board of any school district in the land proposed for annexation.

(7) Any owner of property contiguous or adjacent to a city of the first class may by petition request that such property be included within the corporate limits of such city. The mayor and city council may include such property within the corporate limits of the city without complying with subsections (3) through (6) of this section.

(8) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

Source: Laws 1967, c. 64, § 1, p. 213; Laws 1989, LB 421, § 1; Laws 2007, LB11, § 1; Laws 2009, LB495, § 3; Laws 2016, LB704, § 7.

16-119 Annexation; extraterritorial property use; continuation.

Any extraterritorial zoning regulations, property use regulations, or other laws, codes, rules, or regulations imposed upon any annexed lands by the city before such annexation shall continue in full force and effect until otherwise changed.

Source: Laws 1967, c. 64, § 3, p. 214; Laws 2016, LB704, § 8.

16-120 Annexation; inhabitants; services; when.

The inhabitants of territories annexed by a city of the first class shall receive substantially the services of other inhabitants of such city as soon as practicable. Adequate plans and necessary city council action to furnish such services

shall be adopted not later than one year after the date of annexation, and such inhabitants shall be subject to the ordinances and regulations of such city, except that the one-year period shall be tolled pending final court decision in any court action to contest such annexation.

Source: Laws 1967, c. 64, § 4, p. 214; Laws 1989, LB 421, § 2; Laws 2016, LB704, § 9.

16-122 Annexation of city of the second class or village; conditions.

In addition to existing annexation powers, the mayor and city council of any city of the first class may by ordinance annex any village or city of the second class which is entirely surrounded by such city of the first class, if the following conditions exist:

(1) The city has water mains adjacent to the village or city of the second class which are available for extension into and have capacity to serve the village or city of the second class;

(2) The city has sanitary sewer lines adjacent to the village or city of the second class which are available for extension into and have capacity to serve the village or city of the second class;

(3) The city has water and sewer treatment facilities which have the capacity to serve the village or city of the second class; and

(4) The city has police, fire, and snow removal facilities which have the capacity to serve the village or city of the second class.

In determining whether a village or city of the second class is entirely surrounded by a city for annexation purposes, any land adjacent to the village or city of the second class which is legally immune from annexation by either the city or the village, or city of the second class, shall not be considered if the village or city of the second class is otherwise surrounded by the city.

Source: Laws 1969, c. 72, § 1, p. 394; Laws 2016, LB704, § 10.

16-124 Annexation; succession to property, contracts, obligations, and choses in action.

Whenever any city of the first class extends its boundaries so as to annex any village or city of the second class, the charter, laws, ordinances, powers, and government of such city of the first class shall at once extend over the territory within any village or city of the second class so annexed. Such city of the first class shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind held by or belonging to the village or city of the second class so annexed, and it shall be liable for and assume and carry out all valid contracts, obligations, franchises, and licenses of any such village or city of the second class so annexed. Any obligations incurred by such village or city of the second class for water, paving, sewer, or sewer treatment purposes shall remain the obligation of the real property in such village or city of the second class as its boundaries existed immediately prior to such annexation. Such village or city of the second class so annexed shall be deemed fully compensated by virtue of such annexation and the assumption of its obligations and contracts for all its property and property rights of every kind so acquired.

Source: Laws 1969, c. 72, § 3, p. 395; Laws 2016, LB704, § 11.

16-125 Annexation; taxes, assessments, fines, licenses, fees, claims, demands; paid to and collection by city of the first class.

All taxes, assessments, fines, licenses, fees, claims, and demands of every kind assessed or levied against persons or property within any village or city of the second class annexed under section 16-122 shall be paid to and collected by the city of the first class.

Source: Laws 1969, c. 72, § 4, p. 395; Laws 2016, LB704, § 12.

16-126 Taxes and special assessments; annexation; effect.

All taxes and special assessments which a village or city of the second class annexed under section 16-122 was authorized to levy or assess and which are not levied or assessed at the time of such annexation for any kind of public improvements made or in process of construction or contracted for, may be levied or assessed by the city of the first class. Such city of the first class shall have power to reassess or relevel all special assessments or taxes levied or assessed by any such village or city of the second class so annexed where such village or city of the second class is authorized to make reassessments or relevels of such taxes and assessments.

Source: Laws 1969, c. 72, § 5, p. 395; Laws 2016, LB704, § 13.

16-127 Annexation; pending actions at law or in equity; prosecution and defense by city of the first class.

All actions at law or in equity pending in any court in favor of or against any village or city of the second class annexed under section 16-122 at the time such annexation takes effect shall be prosecuted by or defended by the city of the first class. All rights of action existing against any village or city of the second class annexed under section 16-122 at the time of such annexation or accruing thereafter on account of any transaction had with or under any law or ordinance of such village or city of the second class may be prosecuted against the city of the first class.

Source: Laws 1969, c. 72, § 6, p. 396; Laws 2016, LB704, § 14.

16-128 Annexation; records, books, bonds, funds, and property; property of city of the first class; officers; termination.

All officers of any village or city of the second class annexed under section 16-122 having books, papers, records, bonds, funds, effects, or property of any kind under their control belonging to any such village or city of the second class, shall upon taking effect of such annexation deliver the books, papers, records, bonds, funds, effects, or property to the respective officers of the city of the first class as may be by law or ordinance or limitation of such city entitled or authorized to receive such items. Upon such annexation taking effect, the terms and tenure of all offices and officers of any such village or city of the second class shall terminate and entirely cease.

Source: Laws 1969, c. 72, § 7, p. 396; Laws 2016, LB704, § 15.

16-129 Disconnection of property from corporate limits of city; procedure.

Whenever any person or persons owning any real property within and adjacent to the corporate limits of any city of the first class desire to have such property disconnected from the city, they may file a request with the city

council asking that such territory be detached. The request shall contain the legal description of the property sought to be detached. If the city council determines that the property meets the requirements of this section and that part or all thereof ought to be detached, it shall by a majority vote of its members order such property detached from the city. A certified copy of such order shall be filed by the city clerk in the office of the register of deeds.

Source: Laws 1971, LB 478, § 2; Laws 2016, LB704, § 16.

16-130 Annexation by city within county between 100,000 and 250,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.

(1) The provisions of this section shall govern annexation by a city of the first class located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(2) Except as provided in sections 13-1111 to 13-1120 and subject to this section, the mayor and city council of a city of the first class described in subsection (1) of this section may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of such a city over any agricultural lands which are rural in character.

(3) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(4) Any owner of property contiguous or adjacent to such a city may by petition request that such property be included within the corporate limits of such city.

(5) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

(6) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city, the city clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(7) Prior to the final adoption of the annexation ordinance, the minutes of the city council meeting at which such final adoption was considered shall reflect formal compliance with the provisions of subsection (6) of this section.

(8) No additional or further notice beyond that required by subsection (6) of this section shall be necessary in the event (a) that the scheduled city council public hearing on the proposed annexation is adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council prior to formal passage of the annexation ordinance.

(9) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(10) Except for a willful or deliberate failure to cause notice to be given, the city and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council.

(11) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council.

Source: Laws 2009, LB495, § 4; Laws 2017, LB74, § 1.

ARTICLE 2

GENERAL POWERS

Section	
16-202.	Real estate; conveyance; how effected; remonstrance; procedure; hearing.
16-205.	License or occupation tax; power to levy; exceptions.
16-206.	Dogs and other animals; regulation; license tax; enforcement.
16-207.	Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.
16-212.	Railroads; safety regulations; power to prescribe.
16-213.	Money; power to borrow.
16-214.	Bonds; refunding indebtedness.
16-217.	Officers; removal; vacancies; how filled.
16-218.	Officers; regulation.
16-219.	Officers; bonds or insurance; restrictions upon officers as sureties.
16-220.	Officers; reports; required; when.
16-221.	Watercourses; surface waters; regulation.
16-222.	Fire department; establishment authorized; fire prevention; regulations.
16-222.02.	Employment of full-time fire chief; appointment; duties.
16-225.	Police; regulation; penalties; power to prescribe.
16-226.	Billiard halls; bowling alleys; disorderly houses; gambling; regulation.
16-227.	Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.
16-229.	Vagrants; pickpockets; other offenders; punishment.
16-230.	Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action; special assessment.
16-231.	Health; nuisances; regulation.
16-232.	Excavations; regulation.

Section	
16-233.	Public buildings; safety regulations; licensing; violations; penalty.
16-236.	Pounds; erection; keepers.
16-238.	Spread of disease; regulation; board of health; creation; powers; duties.
16-239.	Hospitals; jails; other institutions; erection; regulation.
16-240.	Health; sanitary regulations.
16-241.	Cemeteries; hospital grounds; waterworks; acquisition; control.
16-243.	Cemeteries; lots; how conveyed; title.
16-246.	General ordinances; authorized; jurisdiction.
16-247.	Ordinances; revision; publication.
16-249.	Streets, alleys, bridges, and sewers; construction and maintenance.
16-250.	Sidewalks; sewers; drains; construction and repair; special assessments.
16-251.	Libraries and museums; establishment; maintenance; powers and duties of mayor and city council.
16-253.	Mayor and city council; supplemental powers; authorized.

16-202 Real estate; conveyance; how effected; remonstrance; procedure; hearing.

The power to sell and convey any real estate owned by a city of the first class, including park land, except real estate used in the operation of public utilities and except real estate for state armory sites for the use of the State of Nebraska as expressly provided in section 16-201, shall be exercised by ordinance directing the conveyance of such real estate and the manner and terms thereof. Notice of such sale and the terms thereof shall be published for three consecutive weeks in a legal newspaper in or of general circulation in such city immediately after the passage and publication of such ordinance.

If within thirty days after the passage and publication of such ordinance a remonstrance petition against such sale is signed by registered voters of the city equal in number to thirty percent of the registered voters of the city voting at the last regular city election held therein and is filed with the city council, the property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Upon the receipt of the petition, the city council, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the petition. The city council shall deliver the petition to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the petition, the election commissioner or county clerk shall issue to the city council a written receipt that the petition is in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the city council. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct, and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, and city, village, or post office address matches the registration records and that the registration was received on or before the date on which the petition was filed with the city council. The

determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the city council finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall certify to the city council the number of valid signatures necessary to constitute a valid petition. The election commissioner or county clerk shall deliver the petition and the certifications to the city council within forty days after the receipt of the petition from the city council. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty signatures on one signature page shall be counted.

The city council shall, within thirty days after the receipt of the petition and certifications from the election commissioner or county clerk, hold a public hearing to review the petition and certifications and receive testimony regarding them. The city council shall, following the hearing, vote on whether or not the petition is valid and shall uphold the petition if sufficient valid signatures have been received.

Source: Laws 1901, c. 18, § 8, p. 230; R.S.1913, § 4817; C.S.1922, § 3985; C.S.1929, § 16-202; Laws 1935, Spec. Sess., c. 10, § 7, p. 75; Laws 1937, c. 27, § 1, p. 148; Laws 1941, c. 130, § 13, p. 497; C.S.Supp.,1941, § 16-202; R.S.1943, § 16-202; Laws 1963, c. 60, § 2, p. 252; Laws 1988, LB 793, § 4; Laws 1993, LB 59, § 1; Laws 1997, LB 230, § 1; Laws 2016, LB704, § 17.

16-205 License or occupation tax; power to levy; exceptions.

A city of the first class may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business within the limits of the city and may regulate the same by ordinance. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. 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 such taxation as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

Source: Laws 1901, c. 18, § 48, IX, p. 247; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4821; C.S.1922, § 3989; C.S.1929, § 16-206; R.S. 1943, § 16-205; Laws 1993, LB 121, § 135; Laws 2012, LB745, § 5; Laws 2014, LB474, § 4.

16-206 Dogs and other animals; regulation; license tax; enforcement.

A city of the first class may collect a license tax from the owners and harborers of dogs and other animals in an amount which shall be determined by the city council and enforce the license tax by appropriate penalties. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals. The city may cause the destruction of any dog or other animal for which the owner or harborer shall refuse or neglect to pay such license tax. The city may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of such dogs and other animals when running at large contrary to any ordinance.

Source: Laws 1901, c. 18, § 48, X, p. 247; R.S.1913, § 4822; C.S.1922, § 3990; C.S.1929, § 16-207; R.S.1943, § 16-206; Laws 1959, c. 59, § 1, p. 253; Laws 1971, LB 478, § 1; Laws 1981, LB 501, § 3; Laws 1997, LB 814, § 4; Laws 2008, LB806, § 3; Laws 2016, LB704, § 18.

16-207 Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.

(1) A city of the first class may by ordinance provide for the removal of all obstructions from the sidewalks, curbstones, gutters, and crosswalks at the expense of the owners or occupants of the grounds fronting thereon or at the expense of the person placing the obstruction and may require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of the trees.

(2) A city of the first class may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits of the city or within its extraterritorial zoning jurisdiction. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the city clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have the work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece

of ground does not request a hearing with the city within five days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The city may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment.

(3) The city may also regulate the building of bulkheads, cellars, basements, ways, stairways, railways, windows, doorways, awnings, hitching posts and rails, lampposts, awning posts, and all other structures projecting upon or over any adjoining excavation through and under the sidewalks in the city.

Source: Laws 1901, c. 18, § 48, XI, p. 247; R.S.1913, § 4823; C.S.1922, § 3991; C.S.1929, § 16-208; R.S.1943, § 16-207; Laws 1994, LB 695, § 5; Laws 2015, LB266, § 5; Laws 2015, LB361, § 17; Laws 2016, LB703, § 1; Laws 2016, LB704, § 19.

16-212 Railroads; safety regulations; power to prescribe.

A city of the first class by ordinance may regulate the crossing of railway tracks and provide precautions and prescribe rules regulating the same, regulate the running of railway engines, cars, and trucks within the limits of such city, and prescribe rules relating thereto, and govern the speed thereof, and make other and further provisions, rules, and restrictions to prevent accidents at the crossings and on the tracks of railways, and to prevent fires from engines. A city of the first class may regulate and prescribe the manner of running street cars, require the heating and cleaning of such cars, and fix and determine the fare charged, require the lighting of any railways within the city in such manner as the city shall prescribe, and fix and determine the number, style, and size of the lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location for such lampposts. If the company owning or operating such railways shall fail to comply with such requirements, the city council may cause such requirements to be complied with by giving notice of such action and may assess the expense of complying with such requirements against such company, and the expense shall constitute a lien on any real estate belonging to such company, and lying within such city, and may be collected in the same manner as taxes for general purposes. The city may (1) require railroad companies to keep flagmen at all railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads, (2) compel any railroad to raise or lower their railroad tracks to conform to the general grade, which may at any time be established by such city, and where such tracks run lengthwise through or over any street, alley, or highway, to keep the tracks level with the street surface, and (3) compel and require railroad companies to keep open the streets, and to construct and keep in repair ditches, drains, sewers, and culverts, along and under their railroad tracks, and to pave their whole right-of-way on all paved streets, and keep the right-of-way and tracks in repair.

Source: Laws 1901, c. 18, § 48, XVI, p. 249; R.S.1913, § 4828; C.S.1922, § 3996; C.S.1929, § 16-213; R.S.1943, § 16-212; Laws 2016, LB704, § 20.

16-213 Money; power to borrow.

A city of the first class may borrow money on the credit of the city and pledge the credit, revenue, and public property of the city for the payment thereof when authorized in the manner provided by law.

Source: Laws 1901, c. 18, § 48, XVII, p. 249; R.S.1913, § 4829; C.S.1922, § 3997; C.S.1929, § 16-214; R.S.1943, § 16-213; Laws 2016, LB704, § 21.

16-214 Bonds; refunding indebtedness.

A city of the first class by ordinance may provide for issuing bonds, for the purpose of funding any and all indebtedness of the city, due or to become due. Floating indebtedness shall be funded only by authority of a vote of the people, but the mayor and city council may by a two-thirds vote issue bonds to pay off any bonded debt without a vote of the people.

Source: Laws 1901, c. 18, § 48, XVIII, p. 250; R.S.1913, § 4830; Laws 1919, c. 34, § 1, p. 112; C.S.1922, § 3998; C.S.1929, § 16-215; R.S.1943, § 16-214; Laws 1969, c. 51, § 26, p. 288; Laws 2016, LB704, § 22.

16-217 Officers; removal; vacancies; how filled.

A city of the first class by ordinance may provide for the removal of elective officers of the city for misconduct. The city may create any office that it deems necessary for the good government and interest of the city. The city may provide for filling vacancies which occur in any elective office, except the mayor or member of the city council, by appointment by the mayor with the consent of the city council to hold his or her office for the unexpired term. Whenever the city council fails to consent to any appointment made under this section by the mayor by the close of the second regular city council meeting following the announcement of the appointment, the vacancy shall be filled by a special election to be held as prescribed by ordinance in the ward in which such vacancy exists. A vacancy in the office of the mayor or on the city council shall be filled as provided in section 32-568.

Source: Laws 1901, c. 18, § 48, XXII, p. 250; R.S.1913, § 4833; C.S.1922, § 4001; C.S.1929, § 16-218; R.S.1943, § 16-217; Laws 1957, c. 55, § 1, p. 266; Laws 1972, LB 1145, § 1; Laws 1980, LB 601, § 1; Laws 1990, LB 853, § 1; Laws 1994, LB 76, § 484; Laws 2016, LB704, § 23.

16-218 Officers; regulation.

Except as otherwise provided by law, a city of the first class by ordinance may regulate and prescribe the powers, duties, and compensation of the officers of the city and classify such offices, on the basis of merit as the city council shall provide for that purpose.

Source: Laws 1901, c. 18, § 48, XXIII, p. 250; R.S.1913, § 4834; C.S. 1922, § 4002; C.S.1929, § 16-219; Laws 1939, c. 11, § 1, p. 78; C.S.Supp.,1941, § 16-219; R.S.1943, § 16-218; Laws 2016, LB704, § 24.

16-219 Officers; bonds or insurance; restrictions upon officers as sureties.

A city of the first class by ordinance may require all officers, elected or appointed, to give bond and security or evidence of equivalent insurance for the faithful performance of their duties. No officer shall become surety upon the official bond of another, or upon any contractor's bond, license, or appeal bond given to the city, or under any ordinance thereof, or from conviction in the county court for violation of any ordinance of such city.

Source: Laws 1901, c. 18, § 48, XXIV, p. 250; R.S.1913, § 4835; C.S.1922, § 4003; C.S.1929, § 16-220; R.S.1943, § 16-219; Laws 1972, LB 1032, § 102; Laws 2007, LB347, § 8; Laws 2016, LB704, § 25.

16-220 Officers; reports; required; when.

A city of the first class may require from any officer of the city at any time a report in detail of the transactions in his or her office or of any matters connected therewith.

Source: Laws 1901, c. 18, § 48, XXV, p. 251; R.S.1913, § 4836; C.S.1922, § 4004; C.S.1929, § 16-221; R.S.1943, § 16-220; Laws 2016, LB704, § 26.

16-221 Watercourses; surface waters; regulation.

A city of the first class may establish, alter, and change the channel of watercourses, and wall and cover them over. No city shall be liable in damages on account of the accumulations of surface waters which fall upon its site, or any portion thereof, unless such accumulations be caused by the act of a city officer while employed in his or her official capacity and by authorization of the mayor and city council first entered of record.

Source: Laws 1901, c. 18, § 48, XXVIII, p. 253; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4837; C.S.1922, § 4005; C.S.1929, § 16-222; R.S.1943, § 16-221; Laws 2016, LB704, § 27.

16-222 Fire department; establishment authorized; fire prevention; regulations.

A city of the first class may provide for the organization and support of a fire department; procure fire engines, hooks, ladders, buckets, and other apparatus; organize fire engine, hook and ladder, and bucket companies, and prescribe rules for duty and the government of the fire department, with such penalties as the city council may deem proper, not exceeding one hundred dollars; make all necessary appropriations for the fire department; and establish regulations for the prevention and extinguishment of fires. The city may prescribe limits within which no building shall be constructed except of brick, stone, or other incombustible material, with fireproof roof, and impose a penalty for the violation of such ordinance. The city may cause the destruction or removal of any building constructed or repaired in violation of such ordinance, and after such limits are established, no special permits shall be given for the erection or repairing of buildings of combustible material. The city may regulate the construction and inspection of, and order the suppression of and cleaning of, fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, business, or enterprise which may be dangerous in causing or

promoting fires, and prescribe limits within which dangerous or obnoxious and offensive businesses or enterprises may be conducted.

Source: Laws 1901, c. 18, § 48, XXIX, p. 253; R.S.1913, § 4838; C.S.1922, § 4006; C.S.1929, § 16-223; R.S.1943, § 16-222; Laws 2016, LB704, § 28.

16-222.02 Employment of full-time fire chief; appointment; duties.

Each city of the first class with a population in excess of forty-one thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed under the Civil Service Act by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of volunteer members of the department so as to be in conformity with the personnel policies of the city.

Source: Laws 2008, LB1096, § 2; Laws 2015, LB455, § 1; Laws 2016, LB857, § 1; Laws 2017, LB113, § 10.

Cross References

Civil Service Act, see section 19-1825.

16-225 Police; regulation; penalties; power to prescribe.

A city of the first class may regulate its police force, establish and support a night watch, impose fines, forfeitures, confinement, and penalties for the breach of any ordinance, and for recovery and collection of such fines, forfeitures, and penalties. In default of payment, it may provide for confinement in the city or county jail or other place of confinement as may be provided by ordinance or as provided under section 16-252.

Source: Laws 1901, c. 18, § 48, XXXII, p. 254; R.S.1913, § 4841; C.S. 1922, § 4009; C.S.1929, § 16-226; R.S.1943, § 16-225; Laws 1965, c. 47, § 1, p. 247; Laws 2016, LB704, § 29.

16-226 Billiard halls; bowling alleys; disorderly houses; gambling; regulation.

A city of the first class by ordinance may regulate, prohibit, and suppress unlicensed billiard tables and bowling alleys, may restrain houses of prostitution, opium joints, dens, and other disorderly houses and practices, games, and gambling houses, may regulate all public amusements, shows, or exhibitions, and may prohibit all lotteries, all fraudulent devices and practices for the purpose of obtaining money or property, all shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and all kinds of public indecencies, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle

Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1901, c. 18, § 48, XXXIII, p. 254; R.S.1913, § 4842; C.S. 1922, § 4010; C.S.1929, § 16-227; R.S.1943, § 16-226; Laws 1986, LB 1027, § 188; Laws 1991, LB 849, § 61; Laws 1993, LB 138, § 63; Laws 2009, LB503, § 13; Laws 2016, LB704, § 30.

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 Shooting Range Protection Act, see section 37-1301.

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

State Lottery Act, see section 9-801.

16-227 Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.

A city of the first class may (1) prevent and restrain riots, routs, noises, disturbances, breach of the peace, or disorderly assemblies in any street, house, or place in the city, (2) regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings, (3) regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, (4) arrest, regulate, punish, or fine vagabonds, (5) regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops, or other places, and the building of bonfires, and (6) regulate and prohibit the piling of building material or any excavation or obstruction in the street.

Source: Laws 1901, c. 18, § 48, XXXIV, p. 255; R.S.1913, § 4843; C.S. 1922, § 4011; C.S.1929, § 16-228; R.S.1943, § 16-227; Laws 2009, LB430, § 3; Laws 2016, LB704, § 31.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

16-229 Vagrants; pickpockets; other offenders; punishment.

A city of the first class by ordinance may provide for the punishment of vagrants, tramps or street beggars, prostitutes, disturbers of the peace, pickpockets, gamblers, burglars, thieves, and persons who practice any game, trick, or device with intent to swindle.

Source: Laws 1901, c. 18, § 48, XXXVI, p. 255; R.S.1913, § 4845; C.S. 1922, § 4013; C.S.1929, § 16-230; R.S.1943, § 16-229; Laws 2016, LB704, § 32.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action; special assessment.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. The city may require the owner or occupant of all lots

and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or within the city's extraterritorial zoning jurisdiction.

(2) Any city of the first class may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (tourn), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*); and

(c) Weeds, grasses, and worthless vegetation does not include vegetation applied or grown on a lot or piece of ground outside the corporate limits of the city but inside the city's extraterritorial zoning jurisdiction expressly for the purpose of weed or erosion control.

Source: Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1; Laws 2009, LB495, § 5; Laws 2013, LB643, § 1; Laws 2015, LB266, § 6; Laws 2015, LB361, § 18; Laws 2016, LB704, § 33.

16-231 Health; nuisances; regulation.

A city of the first class may prevent any person from bringing, depositing, having, or leaving upon or near his or her premises or elsewhere in the city or within the extraterritorial zoning jurisdiction of the city any carcass or putrid beef, pork, fish, hides, or skins of any kind or any unwholesome substance and may compel the removal of the same.

Source: Laws 1901, c. 18, § 48, XXXVIII, p. 256; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4847; C.S.1922, § 4015; C.S.1929, § 16-232; R.S.1943, § 16-231; Laws 1988, LB 934, § 3; Laws 2016, LB704, § 34.

16-232 Excavations; regulation.

A city of the first class by ordinance may prevent the digging of holes, pits, or excavations within the city, except for the purpose of building where such excavations are made, prevent the leaving of any holes, pits, or excavations within such city in an exposed condition, and require the filling of same.

Source: Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4848; C.S.1922, § 4016; C.S.1929, § 16-233; R.S.1943, § 16-232; Laws 2016, LB704, § 35.

16-233 Public buildings; safety regulations; licensing; violations; penalty.

A city of the first class may regulate, license, or suppress halls, opera houses, places of amusement, entertainment, or instruction, or other buildings except churches and schools used for the assembly of citizens, and cause them to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fire and for escape from such places in case of fire, and prevent overcrowding and regulate the placing and use of seats, chairs, benches, scenery, curtains, blinds, screens, or other appliances therein. A city of the first class may provide that for any violation of any such regulation a penalty of two hundred dollars shall be imposed, and upon conviction of any such licensees of any violation of any ordinance regulating such places, the license of any such place shall be revoked by the mayor and city council. Whenever the mayor and city council shall by resolution declare any such place to be unsafe, the license thereof shall be deemed revoked by adoption of such resolution. The city council may provide that in any case where it has so revoked a license, any owner, proprietor, manager, lessee or person opening, using, or permitting such place to be opened or used for any purpose involving the assemblage of more than

twelve persons shall upon conviction thereof be deemed guilty of a misdemeanor and fined in any sum not exceeding two hundred dollars.

Source: Laws 1901, c. 18, § 48, XXXIX, p. 256; R.S.1913, § 4849; C.S. 1922, § 4017; C.S.1929, § 16-234; R.S.1943, § 16-233; Laws 2016, LB704, § 36.

16-236 Pounds; erection; keepers.

A city of the first class may provide for the erection of all necessary pens, pounds, and buildings for the use of the city, within the city limits or within its extraterritorial zoning jurisdiction, appoint and compensate keepers thereof, and establish and enforce rules governing the same.

Source: Laws 1901, c. 18, § 48, XLII, p. 257; R.S.1913, § 4852; C.S.1922, § 4020; C.S.1929, § 16-237; R.S.1943, § 16-236; Laws 2016, LB704, § 37.

16-238 Spread of disease; regulation; board of health; creation; powers; duties.

A city of the first class may make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city. In cities with a commission form of government as provided in Chapter 19, article 4, and cities with a city manager plan of government as provided in Chapter 19, article 6, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, and two other members. In all other cities, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, the president of the city council, and one other member. A majority of such board shall constitute a quorum and shall enact rules and regulations, having the force and effect of law, to safeguard the health of the people of such city and prevent nuisances and unsanitary conditions, enforce the same, and provide fines and punishments for the violation of such rules and regulations.

Source: Laws 1901, c. 18, § 48, XLIV, p. 257; R.S.1913, § 4854; Laws 1919, c. 37, § 1, p. 118; C.S.1922, § 4022; C.S.1929, § 16-239; R.S.1943, § 16-238; Laws 1977, LB 190, § 1; Laws 1993, LB 119, § 1; Laws 1994, LB 1019, § 1; Laws 2016, LB704, § 38.

16-239 Hospitals; jails; other institutions; erection; regulation.

A city of the first class may erect, establish, and regulate hospitals, multiunit housing, houses of correction, jails, station houses, and other necessary buildings and provide for the support and government of such buildings and facilities.

Source: Laws 1901, c. 18, § 48, XLV, p. 257; R.S.1913, § 4855; C.S.1922, § 4023; C.S.1929, § 16-240; R.S.1943, § 16-239; Laws 1992, LB 1240, § 13; Laws 2016, LB704, § 39.

16-240 Health; sanitary regulations.

A city of the first class by ordinance may make regulations to secure the general health of the city, prescribe rules for the prevention, abatement, and

removal of nuisances, make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, dairies, or other places where offensive matter is kept, or is likely to accumulate, within the city or within its extraterritorial zoning jurisdiction, and to limit or fix the maximum number of swine or neat cattle that may be kept in sheds, stables, barns, feedlots, or other enclosures.

Source: Laws 1901, c. 18, § 48, XLVI, p. 257; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4856; Laws 1919, c. 37, § 1, p. 119; C.S.1922, § 4024; C.S.1929, § 16-241; R.S.1943, § 16-240; Laws 2015, LB266, § 7; Laws 2016, LB704, § 40.

16-241 Cemeteries; hospital grounds; waterworks; acquisition; control.

A city of the first class may purchase, hold, and pay for, as provided in sections 16-241 to 16-245, lands for the purpose of the burial of the dead, and all necessary grounds for hospital grounds and waterworks, and have and exercise police jurisdiction over such lands, grounds, and waterworks, and over any cemetery lying near such city and used by the inhabitants thereof.

Source: Laws 1901, c. 18, § 48, XLVII, p. 258; R.S.1913, § 4857; C.S. 1922, § 4025; C.S.1929, § 16-242; R.S.1943, § 16-241; Laws 1973, LB 276, § 1; Laws 2016, LB704, § 41.

Cross References

For additional provisions relating to cemeteries, see Chapter 12.

16-243 Cemeteries; lots; how conveyed; title.

A city of the first class may convey cemetery lots owned by such city, by certificates signed by the mayor and countersigned by the city clerk under the seal of the city specifying that the person to whom the certificate is issued is the owner of the lot or lots described therein by number as laid down on such plat or map, for the purpose of interment. Such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple of such lot for the sole purpose of interment, under the regulations of the city council.

Source: Laws 1901, c. 18, § 48, XLIX, p. 258; R.S.1913, § 4859; C.S.1922, § 4027; C.S.1929, § 16-244; R.S.1943, § 16-243; Laws 2015, LB241, § 2; Laws 2016, LB704, § 42.

16-246 General ordinances; authorized; jurisdiction.

A city of the first class may make all such ordinances, bylaws, rules, regulations, and resolutions not inconsistent with the general laws of the state as may be necessary or expedient, in addition to the special powers otherwise granted by law, for maintaining the peace, good government, and welfare of the city and its trade, commerce, and manufactures, for preserving order and securing persons or property from violence, danger, and destruction, for protecting public and private property, and for promoting the public health, safety, convenience, comfort, and morals and the general interests and welfare of the inhabitants of the city. It may (1) impose fines, forfeitures, and penalties for the violation of any ordinance, (2) provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties, and (3) in default of payment, provide for confinement in the city or county jail or other place of confinement as may be provided by ordinance. The jurisdiction of the city to

enforce such ordinances, bylaws, rules, regulations, and resolutions shall extend over the city and over all places within the extraterritorial zoning jurisdiction of the city.

Source: Laws 1901, c. 18, § 48, LII, p. 259; R.S.1913, § 4862; C.S.1922, § 4030; C.S.1929, § 16-247; R.S.1943, § 16-246; Laws 1965, c. 47, § 2, p. 247; Laws 1965, c. 48, § 2, p. 249; Laws 1988, LB 934, § 4; Laws 2016, LB704, § 43.

16-247 Ordinances; revision; publication.

A city of the first class may revise the ordinances of the city from time to time and publish the same in pamphlet or book form. Such revision shall be by one ordinance, embracing all ordinances preserved as changed or added to and perfected by revision, and shall embrace all the ordinances of every nature preserved, and be a repeal of all ordinances in conflict with such revision; but all ordinances then in force shall continue in force after such revision for the purpose of all rights acquired, fines, penalties, forfeitures, and liabilities incurred, and actions therefor. The only title necessary for such revision and repeal shall be An ordinance to revise all the ordinances of the city of, and sections and chapters may be used instead of numbers, and original titles need not be preserved, nor signature of the mayor required.

Source: Laws 1901, c. 18, § 48, LIV, p. 259; Laws 1903, c. 19, § 9, p. 240; R.S.1913, § 4863; C.S.1922, § 4031; C.S.1929, § 16-248; R.S. 1943, § 16-247; Laws 2016, LB704, § 44.

Cross References

For procedure generally in revision of ordinances, see sections 16-403 to 16-405.

16-249 Streets, alleys, bridges, and sewers; construction and maintenance.

A city of the first class may provide for the grading, repairing, and sprinkling of any street, avenue, or alley, and the construction of bridges, culverts, and sewers, and shall defray the repairs of the street, avenue, alley, bridge, culvert, or sewer out of the proper fund of such city, but no street shall be graded except the street ordered to be done by the affirmative vote of two-thirds of the city council. On written petition of not less than one-half the owners of street front of the land fronting on any street or any specified part thereof, the mayor and city council may order such street or any specified part thereof to be sprinkled with water at such time or times as the city council may deem proper. Such sprinkling shall be done by contract awarded to the lowest responsible bidder in each case, and for the entire city or specified district thereof. To pay the expenses of such sprinkling the city council may make special assessments upon the lands abutting upon such street or specified part thereof either on the valuation thereof, as listed for taxation, or by foot front. Such assessment shall be collected by special taxation.

Source: Laws 1901, c. 18, § 48, III, p. 245; Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4865; C.S.1922, § 4033; C.S.1929, § 16-250; R.S. 1943, § 16-249; Laws 2016, LB704, § 45.

16-250 Sidewalks; sewers; drains; construction and repair; special assessments.

A city of the first class may construct or repair sidewalks, sewers, and drains on any highway in the city, construct or repair iron railings or gratings for areaways, cellars, or entrances to basements of buildings, and levy a special assessment on lots or parcels of land fronting on such sidewalk, waterway, highway, or alley to pay the expense of such improvements, to be assessed as a special assessment. Unless a majority of the owners of the property subject to assessment for such improvements petition the city council to make the improvements, such improvements shall not be made until three-fourths of all the members of the city council, by vote, assent to the making of the improvements, which vote, by yeas and nays, shall be entered of record.

Source: Laws 1901, c. 18, § 48, VI, p. 246; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4866; C.S.1922, § 4034; C.S.1929, § 16-251; R.S. 1943, § 16-250; Laws 2015, LB361, § 19; Laws 2016, LB704, § 46.

Cross References

Manner of assessment, see section 16-666.

16-251 Libraries and museums; establishment; maintenance; powers and duties of mayor and city council.

The mayor and city council of any city of the first class may (1) establish and maintain public libraries, reading rooms, art galleries, and museums and provide the necessary grounds or buildings therefor, (2) purchase the papers, books, maps, manuscripts, and works of art and objects of natural or scientific curiosity and instruction therefor, and (3) receive donations and bequests of money or property for the public libraries, reading rooms, art galleries, and museums in trust or otherwise. The mayor and city council may also pass necessary bylaws and regulations for the protection and government of the public libraries, reading rooms, art galleries, and museums. The ownership of the real and personal property of a public library shall be in the city. The mayor and city council shall approve any personnel administrative or compensation policy or procedure applying to a director or employee of a public library, reading room, art gallery, or museum before such policy or procedure is implemented.

Source: Laws 1901, c. 18, § 49, p. 268; Laws 1903, c. 19, § 10, p. 241; R.S.1913, § 4867; C.S.1922, § 4035; C.S.1929, § 16-252; R.S. 1943, § 16-251; Laws 2012, LB470, § 1; Laws 2016, LB704, § 47.

16-253 Mayor and city council; supplemental powers; authorized.

When the power is conferred upon the mayor and city council of any city of the first class to do and perform any act or thing, and the manner of exercising such power is not specially pointed out, the mayor and city council may provide by ordinance the details necessary for the full exercise of such power.

Source: Laws 1901, c. 18, § 120, p. 303; R.S.1913, § 4870; C.S.1922, § 4038; C.S.1929, § 16-255; R.S.1943, § 16-253; Laws 2016, LB704, § 48.

ARTICLE 3
OFFICERS, ELECTIONS, EMPLOYEES

Section

- 16-302.01. Officers; election; qualifications; term.
 16-304. City council; members; bond or insurance; payment of premium; amount; conditions.
 16-305. Officers and employees; merger of offices or employment; salaries.
 16-306. City of the second class; reorganization as city of the first class; city council member; continuance in office.
 16-308. Administrator, departments, and other appointed officers; enumerated; appointment and removal.
 16-309. Appointed officers; terms.
 16-310. Officers and employees; compensation fixed by ordinance.
 16-312. Mayor; powers and duties.
 16-313. Mayor; veto power; passage over veto.
 16-314. Mayor; legislative recommendations; jurisdiction.
 16-317. City clerk; duties.
 16-318. City treasurer; bond or insurance; premium; duties; reports.
 16-319. City attorney; duties; compensation; additional legal assistance.
 16-320. City engineer; duties.
 16-321. City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.
 16-322. Special engineer; when employed.
 16-323. Chief of police; police officers; powers and duties.
 16-324. Street commissioner; duties.
 16-325. Board of public works; appointment; oath; terms; duties; removal from office.
 16-326. Elective officers; compensation; change during term prohibited; exception.
 16-327. Officers; reports required.

16-302.01 Officers; election; qualifications; term.

In any city of the first class except any city having adopted the commissioner or city manager plan of government, the mayor and city council members shall be registered voters of the city and the city council members shall be residents of the ward from which elected if elected by ward and residents of the city if elected at large. The city council may also, by a two-thirds vote of its members, provide by ordinance for the election of the treasurer and clerk. All nominations and elections of such officers shall be held as provided in the Election Act. The terms of office of all such members shall commence on the first regular meeting of the city council in December following their election.

Source: Laws 1969, c. 257, § 3, p. 933; Laws 1973, LB 558, § 1; Laws 1975, LB 323, § 1; Laws 1976, LB 688, § 1; Laws 1977, LB 201, § 4; Laws 1979, LB 421, § 2; Laws 1979, LB 80, § 22; Laws 1981, LB 446, § 1; Laws 1982, LB 807, § 41; Laws 1983, LB 308, § 2; Laws 1990, LB 957, § 3; Laws 1990, LB 853, § 2; Laws 1994, LB 76, § 485; Laws 2001, LB 730, § 1; Laws 2016, LB704, § 49.

Cross References

City council, election, see section 32-534.

Election Act, see section 32-101.

Vacancies, see sections 32-568 and 32-569.

16-304 City council; members; bond or insurance; payment of premium; amount; conditions.

Each city council member, before entering upon the duties of his or her office, shall be required to give bond or evidence of equivalent insurance to the city. The bond shall be with two or more good and sufficient sureties or some responsible surety company. If by two sureties, they shall each justify that he or she is worth at least two thousand dollars over and above all debts and exemptions. Such bonds or evidence of equivalent insurance shall be in the sum of one thousand dollars, shall be conditioned for the faithful discharge of the duties of the city council member giving such bond or insurance, and shall be further conditioned that if the city council member shall vote for any expenditure or appropriation of money or creation of any liability in excess of the amount allowed by law, such city council member, and the sureties signing such bond, shall be liable thereon. The bond shall be filed with the city clerk and approved by the mayor, and upon the approval, the city may pay the premium for such bond. Any liability sought to be incurred, or debt created in excess of the amount limited or authorized by law, shall be taken and held by every court of the state as the joint and several liability and obligation of the city council member voting for and the mayor approving such liability, obligation, or debt, and not the debt, liability, or obligation of the city. Voting for or approving of such liability, obligation, or debt shall be conclusive evidence of malfeasance in office for which such city council member or mayor may be removed from office.

Source: Laws 1901, c. 18, § 12, p. 232; Laws 1903, c. 19, § 1, p. 232; Laws 1907, c. 13, § 1, p. 106; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 223; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 202; C.S.1929, § 16-302; R.S.1943, § 16-304; Laws 1965, c. 49, § 1, p. 250; Laws 1979, LB 80, § 23; Laws 2007, LB347, § 9; Laws 2016, LB704, § 50.

16-305 Officers and employees; merger of offices or employment; salaries.

All officers and employees of the city shall receive such compensation as the mayor and city council may fix at the time of their appointment or employment, subject to the limitations set forth in this section. The city council may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The city manager in a city under the city manager plan of government as provided in Chapter 19, article 6, may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The offices or employments so merged and combined shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or

compensation of the office, offices, employment, or employments so merged and combined.

Source: Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 224; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 203; C.S.1929, § 16-302; R.S.1943, § 16-305; Laws 1984, LB 368, § 1; Laws 1990, LB 756, § 1; Laws 1990, LB 931, § 2; Laws 1991, LB 12, § 1; Laws 1994, LB 76, § 486; Laws 2016, LB704, § 51.

16-306 City of the second class; reorganization as city of the first class; city council member; continuance in office.

In any city which becomes a city of the first class, any city council member whose term extends through another year or years by reason of his or her prior election under the provisions governing cities of the second class shall hold his or her office as a city council member from the ward in which he or she is a resident as if he or she were elected for the same term under the provisions of the Election Act governing cities of the first class.

Source: Laws 1915, c. 85, § 1, p. 224; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 203; C.S.1929, § 16-302; R.S.1943, § 16-306; Laws 1969, c. 257, § 4, p. 934; Laws 1979, LB 80, § 24; Laws 1990, LB 957, § 4; Laws 1994, LB 76, § 487; Laws 2016, LB704, § 52.

Cross References

Election Act, see section 32-101.

For reorganization as city of the first class, see sections 16-102 and 16-103.

16-308 Administrator, departments, and other appointed officers; enumerated; appointment and removal.

Each city of the first class shall have such departments and appointed officers as shall be established by ordinance passed by the city council, which shall include a city clerk, treasurer, engineer, and attorney, and such officers as may otherwise be required by law. Except as provided in Chapter 19, article 6, the mayor may, with the approval of the city council, appoint the necessary officers, as well as an administrator, who shall perform such duties as prescribed by ordinance. Except as provided in Chapter 19, article 6, the appointed officers may be removed at any time by the mayor with approval of a majority of the city council. The office of administrator may not be held by the mayor. The appointed administrator may concurrently hold any other appointive office provided for in this section and section 16-325.

Source: Laws 1901, c. 18, § 14, p. 233; Laws 1903, c. 19, § 2, p. 233; Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4874; Laws 1917, c. 95, § 1, p. 252; Laws 1921, c. 164, § 1, p. 657; C.S.1922, § 4042; C.S.1929, § 16-304; R.S.1943, § 16-308; Laws 1953, c. 26, § 1, p. 110; Laws 1961, c. 41, § 1, p. 171; Laws 1963, c. 61, § 2, p. 254; Laws 1974, LB 1024, § 1; Laws 1975, LB 93, § 1; Laws 1976, LB 782, § 12; Laws 2016, LB704, § 53.

16-309 Appointed officers; terms.

All officers appointed by the mayor and confirmed by the city council shall hold the office to which they may be appointed until the end of the mayor's term of office and until their successors are appointed and qualified, unless

sooner removed or the ordinance creating the office is repealed, or as otherwise provided by law.

Source: Laws 1901, c. 18, § 15, p. 233; Laws 1903, c. 19, § 3, p. 234; R.S.1913, § 4875; C.S.1922, § 4043; C.S.1929, § 16-305; R.S. 1943, § 16-309; Laws 1997, LB 734, § 1; Laws 2016, LB704, § 54.

16-310 Officers and employees; compensation fixed by ordinance.

The officers and employees in cities of the first class shall receive such compensation as the mayor and city council shall fix by ordinance.

Source: Laws 1901, c. 18, § 17, p. 234; Laws 1901, c. 19, § 1, p. 306; Laws 1903, c. 19, § 4, p. 234; Laws 1907, c. 13, § 1, p. 108; R.S.1913, § 4876; Laws 1915, c. 85, § 2, p. 224; Laws 1917, c. 95, § 1, p. 253; Laws 1919, c. 36, § 1, p. 117; C.S.1922, § 4044; C.S.1929, § 16-306; Laws 1943, c. 30, § 1, p. 139; R.S. 1943, § 16-310; Laws 1947, c. 25, § 1, p. 126; Laws 1955, c. 29, § 1, p. 134; Laws 1963, c. 62, § 1, p. 255; Laws 1965, c. 50, § 1, p. 251; Laws 1969, c. 75, § 1, p. 404; Laws 2016, LB704, § 55.

16-312 Mayor; powers and duties.

The mayor shall preside at all the meetings of the city council and shall have the right to vote when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council. He or she shall have the superintending control of all the officers and affairs of the city and shall take care that the ordinances of the city and the provisions of law relating to cities of the first class are complied with. He or she may administer oaths and shall sign the commissions and appointments of all the officers appointed in the city.

Source: Laws 1901, c. 18, § 19, p. 234; R.S.1913, § 4878; C.S.1922, § 4046; C.S.1929, § 16-308; R.S.1943, § 16-312; Laws 1957, c. 55, § 2, p. 266; Laws 1980, LB 662, § 1; Laws 1989, LB 790, § 1; Laws 2016, LB704, § 56.

16-313 Mayor; veto power; passage over veto.

The mayor shall have the power to approve or veto any ordinance passed by the city council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or items of appropriations or claims, he or she shall return it to the city council stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, the mayor shall notify the city clerk of the veto in writing. The city clerk shall notify the city council in writing of the mayor's veto. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor, may be passed over his or her veto by a vote of two-thirds of all the members elected to the city council, notwithstanding his or her veto. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any

contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items so vetoed may be passed by the city council over the veto as in other cases.

Source: Laws 1901, c. 18, § 20, p. 234; R.S.1913, § 4879; C.S.1922, § 4047; C.S.1929, § 16-309; R.S.1943, § 16-313; Laws 2014, LB803, § 1; Laws 2016, LB704, § 57.

16-314 Mayor; legislative recommendations; jurisdiction.

The mayor shall, from time to time, communicate to the city council such information and recommend such measures as in his or her opinion may tend to the improvement of the finances of the city, the police, health, comfort, and general prosperity of the city, and may have such jurisdiction as may be invested in him or her by ordinance over all places within the extraterritorial zoning jurisdiction of the city, for the enforcement of health or quarantine ordinances and the regulation thereof.

Source: Laws 1901, c. 18, § 21, p. 235; Laws 1901, c. 19, § 2, p. 307; R.S.1913, § 4880; C.S.1922, § 4048; C.S.1929, § 16-310; R.S. 1943, § 16-314; Laws 2016, LB704, § 58.

16-317 City clerk; duties.

The city clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the city council. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city clerk may transfer such journal of the proceedings of the city council to the State Archives of the Nebraska State Historical Society for permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city.

Source: Laws 1901, c. 18, § 25, p. 236; R.S.1913, § 4883; C.S.1922, § 4051; C.S.1929, § 16-313; R.S.1943, § 16-317; Laws 1973, LB 224, § 4; Laws 2013, LB112, § 1; Laws 2016, LB704, § 59.

Cross References

Records Management Act, see section 84-1220.

16-318 City treasurer; bond or insurance; premium; duties; reports.

(1) The city treasurer shall be required to give bond or evidence of equivalent insurance of not less than twenty-five thousand dollars, or he or she may be required to give bond in double the sum of money estimated by the city council at any time to be in his or her hands belonging to the city. The city treasurer shall be the custodian of all money belonging to the city. The city council shall pay the actual premium of the bond or insurance coverage of such treasurer.

(2) The city treasurer shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid. He or she shall also file copies of such receipts, except tax receipts, with his or her monthly reports, and he or she shall at the end of every month, and as often as may be requested, render an account to the city council, under oath, showing the state of the treasury at the

date of such account, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury. The city treasurer shall also accompany such account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with all vouchers held by him or her, shall be filed with his or her account in the city clerk's office. He or she shall produce and show all funds shown by such report to be on hand, or satisfy the city council or its committee that he or she has such funds in his or her custody or under his or her control. If the city treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the city council, the mayor with the consent of the city council may consider this failure as cause to remove the city treasurer from office.

(3) The city treasurer shall keep a record of all outstanding bonds against the city, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

(4) The city treasurer may employ and appoint a delinquent tax collector, who shall be allowed a percentage upon his or her collections to be fixed by the city council, not to exceed the fees allowed by law to the county treasurer for like services. Upon taxes collected by such delinquent tax collector, the city treasurer shall receive no fees.

(5) The city treasurer shall prepare all special assessment lists and shall collect all special assessments.

Source: Laws 1901, c. 18, § 26, p. 236; Laws 1909, c. 19, § 1, p. 181; R.S.1913, § 4884; C.S.1922, § 4052; C.S.1929, § 16-314; R.S. 1943, § 16-318; Laws 1969, c. 77, § 1, p. 405; Laws 2005, LB 528, § 1; Laws 2007, LB347, § 10; Laws 2013, LB112, § 2; Laws 2016, LB704, § 60.

16-319 City attorney; duties; compensation; additional legal assistance.

The city attorney shall be the legal advisor of the city council and other city officers. The city attorney shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the city, or that may be ordered by the city council. He or she shall attend meetings of the city council and give them his or her opinion upon any matters submitted to him or her, either orally or in writing as may be required. The mayor and city council shall have the right to pay the city attorney additional compensation for legal services performed by him or her for the city or to employ additional legal assistance and to pay for such legal assistance out of the funds of the city. Whenever the mayor and city council have by ordinance so authorized, the board of public works shall have the right to pay the city attorney additional compensation for legal services performed by him or her for it or to employ additional legal assistance other than the city attorney and pay such legal assistance out of funds disbursed under the orders of the board of public works.

Source: Laws 1901, c. 18, § 27, p. 237; R.S.1913, § 4885; C.S.1922, § 4053; C.S.1929, § 16-315; R.S.1943, § 16-319; Laws 1947, c. 26, § 1, p. 127; Laws 1955, c. 30, § 1, p. 136; Laws 2016, LB704, § 61.

16-320 City engineer; duties.

The city engineer shall make a record of the minutes of his or her surveys and of all work done for the city, including sewers, extension of water systems and heating systems, electric light and sewerage systems, and power plants, and accurately make such plats, sections, profiles, and maps as may be necessary in the prosecution of any public work, which shall be public records and belong to the city and be turned over to his or her successor.

Source: Laws 1901, c. 18, § 28, p. 237; R.S.1913, § 4886; C.S.1922, § 4054; C.S.1929, § 16-316; R.S.1943, § 16-320; Laws 2016, LB704, § 62.

16-321 City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.

(1) The city engineer shall, when requested by the mayor or city council, make estimates of the cost of labor and material which may be done or furnished by contract with the city and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light systems, waterworks, power plants, public heating systems, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the city council may require. When the city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council.

(3) Except as provided in section 18-412.01, before the city council makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer and submitted to the city council. In advertising for bids as provided in subsections (4) and (6) of this section, the city council may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper in or of general circulation in the city. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 16-405 when adopted by a three-fourths vote of the city council and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council receives fewer than two bids on a contract or if the bids received by the city council contain a price which exceeds the estimated cost, the mayor and the city council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the city, the city council or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1901, c. 18, § 29, p. 237; R.S.1913, § 4887; C.S.1922, § 4055; Laws 1925, c. 44, § 1, p. 174; C.S.1929, § 16-317; R.S.1943, § 16-321; Laws 1947, c. 26, § 2, p. 128; Laws 1951, c. 25, § 1, p. 115; Laws 1959, c. 61, § 1, p. 276; Laws 1969, c. 78, § 1, p. 407; Laws 1971, LB 85, § 1; Laws 1975, LB 171, § 1; Laws 1979, LB 356, § 1; Laws 1983, LB 304, § 1; Laws 1984, LB 540, § 7; Laws 1997, LB 238, § 1; Laws 2008, LB947, § 1; Laws 2016, LB704, § 63.

16-322 Special engineer; when employed.

The mayor and city council may, whenever they deem it expedient, employ a special engineer to make or assist in making any particular estimate or survey, and any estimate or survey made by such special engineer shall have the same validity and serve in all respects as though the same had been made by the city engineer.

Source: Laws 1901, c. 18, § 98, p. 297; R.S.1913, § 4888; C.S.1922, § 4056; C.S.1929, § 16-318; R.S.1943, § 16-322; Laws 2016, LB704, § 64.

16-323 Chief of police; police officers; powers and duties.

The chief of police shall have the immediate superintendence of the police. He or she and the police officers shall have the power and the duty to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as a county sheriff and to keep such offenders in the city prison or other place to prevent their escape until a trial or examination may be had before the proper officer. The chief of police and police officers shall have the same power as the county sheriff in relation to all criminal matters arising out of a violation of a city ordinance and all process issued by the county court in connection with a violation of a city ordinance.

Source: Laws 1901, c. 18, § 30, p. 238; R.S.1913, § 4889; C.S.1922, § 4057; C.S.1929, § 16-319; R.S.1943, § 16-323; Laws 1972, LB 1032, § 103; Laws 1979, LB 80, § 26; Laws 1988, LB 1030, § 4; Laws 2016, LB704, § 65.

Cross References

Ticket quota requirements, prohibited, see section 48-235.

16-324 Street commissioner; duties.

The street commissioner shall be subject to the orders of the mayor and city council by resolution, have general charge, direction, and control of all work in the streets, sidewalks, culverts, and bridges of the city, except matters in charge of the board of public works, and shall perform such other duties as the city council may require.

Source: Laws 1901, c. 18, § 31, p. 238; R.S.1913, § 4890; C.S.1922, § 4058; C.S.1929, § 16-320; R.S.1943, § 16-324; Laws 1961, c. 42, § 1, p. 173; Laws 2016, LB704, § 66.

16-325 Board of public works; appointment; oath; terms; duties; removal from office.

(1) There may be in each city of the first class a board of public works which shall consist of three members, each having a three-year term of office, or five members, each having a five-year term of office, the number to be set by ordinance, which members shall be residents of such city and be appointed by the mayor with the assent of the city council. When such board is first established, one member shall be appointed for a term of one year, one for two years, and one for three years and, in the case of a five-member board, an additional member shall be so appointed for four years and another for five years. Thereafter, as their terms expire, all members shall be appointed for a full term of three or five years as the case may be. The mayor, with the assent of the city council, shall designate one of the members of such board to be the chairperson thereof.

(2) Each of the members of the board of public works shall, before entering upon the discharge of his or her duties, take an oath to discharge faithfully the duties of the office.

(3) It shall be the duty of the board of public works to (a) make contracts on behalf of the city for the performance of all such work and erection of all such improvements in the manner provided in section 16-321, (b) superintend the performance of all such work and the erection of all such improvements, (c) approve the estimates of the city engineer, which may be made from time to

time, of the value of the work as the same may progress, (d) accept any work done or improvements made when the same shall be fully completed according to contract, subject to the approval of the mayor and city council, and (e) perform such other duties as may be conferred upon such board by ordinance.

(4) Any member of the board of public works may at any time be removed from office by the mayor and a majority of the city council, and the proceedings in regard thereto shall be entered in the journal of the city council.

Source: Laws 1901, c. 18, § 70, p. 283; R.S.1913, § 4891; C.S.1922, § 4059; Laws 1925, c. 44, § 2, p. 175; C.S.1929, § 16-321; R.S.1943, § 16-325; Laws 1947, c. 26, § 3, p. 129; Laws 1953, c. 26, § 2, p. 111; Laws 1965, c. 52, § 1, p. 255; Laws 1971, LB 494, § 2; Laws 1973, LB 24, § 1; Laws 1984, LB 682, § 6; Laws 2016, LB704, § 67.

16-326 Elective officers; compensation; change during term prohibited; exception.

The salary of any elective officer shall not be increased or diminished during the term for which he or she was elected, except that when there are officers elected to the city council, or to a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he or she was elected when, during the same time, the salary has been increased.

Source: Laws 1901, c. 18, § 32, p. 238; R.S.1913, § 4892; C.S.1922, § 4060; C.S.1929, § 16-322; R.S.1943, § 16-326; Laws 1969, c. 75, § 2, p. 404; Laws 1972, LB 943, § 1; Laws 2016, LB704, § 68.

16-327 Officers; reports required.

The mayor or city council shall have power, when he, she, or it deems it necessary, to require any officer of the city to exhibit his or her accounts or other papers and make reports to the city council, in writing, touching any subject or matter it may require pertaining to the office.

Source: Laws 1901, c. 18, § 33, p. 239; R.S.1913, § 4893; C.S.1922, § 4061; C.S.1929, § 16-323; R.S.1943, § 16-327; Laws 1979, LB 80, § 27; Laws 2016, LB704, § 69.

ARTICLE 4

COUNCIL AND PROCEEDINGS

Section

- 16-401. City council; meetings, regular and special; quorum.
- 16-402. City council; president; acting president; duties.
- 16-403. City council; ordinances; passage; proof; publication.
- 16-404. City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.
- 16-405. City council; ordinances; style; publication; emergency ordinances.
- 16-406. City council; testimony; power to compel; oaths.

16-401 City council; meetings, regular and special; quorum.

Regular meetings of the city council shall be held at such times as may be fixed by ordinance and special meetings whenever called by the mayor or any four city council members. A majority of all the members elected to the city council shall constitute a quorum for the transaction of any business, except as otherwise required by law, but a less number may adjourn, from time to time, and compel the attendance of absent members. An affirmative vote of not less than one-half of the elected members shall be required for the transaction of any business.

Source: Laws 1901, c. 18, § 16, p. 233; R.S.1913, § 4894; C.S.1922, § 4062; C.S.1929, § 16-401; R.S.1943, § 16-401; Laws 1975, LB 118, § 1; Laws 1987, LB 652, § 1; Laws 2016, LB704, § 70.

16-402 City council; president; acting president; duties.

The city council shall elect one of the city council members as president of the city council, and he or she shall preside at all meetings of the city council in the absence of the mayor. In the absence of the president, the city council members shall elect one of their own body to occupy the place temporarily, who shall be styled acting president of the city council. The president and acting president, when occupying the place of mayor, shall have the same privileges as other members of the city council, and all acts of the president or acting president while so acting shall be as binding upon the city council and upon the city as if done by the mayor.

Source: Laws 1901, c. 18, § 53, p. 259; R.S.1913, § 4895; C.S.1922, § 4063; C.S.1929, § 16-402; R.S.1943, § 16-402; Laws 1987, LB 652, § 2; Laws 2016, LB704, § 71.

16-403 City council; ordinances; passage; proof; publication.

All ordinances shall be passed pursuant to such rules and regulations as the city council may provide, and all such ordinances may be proved by the certificate of the city clerk under the seal of the city. When printed or published in book or pamphlet form and purporting to be published by authority of the city, such ordinances shall be read and received in evidence in all courts and places without further proof. The passage, approval, and publication or posting of such ordinance shall be sufficiently proved by a certificate under the seal of the city from the city clerk showing that such ordinance was passed and approved, and when and in what paper the same was published, and when and by whom and where the same was posted. When ordinances are published in book or pamphlet form, purporting to be published by authority of the city council, the same need not be otherwise published and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1901, c. 18, § 46, p. 244; R.S.1913, § 4896; C.S.1922, § 4064; C.S.1929, § 16-403; R.S.1943, § 16-403; Laws 2016, LB704, § 72.

16-404 City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.

(1) All ordinances and resolutions or orders for the appropriation or payment of money in a city of the first class shall require for their passage or adoption

the concurrence of a majority of all members elected to the city council. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council.

(2) Ordinances of a general or permanent nature in a city of the first class shall be read by title on three different days unless three-fourths of the city council members vote to suspend this requirement, except that in a city having a commission form of government such requirement may be suspended by a three-fifths majority vote. Regardless of the form of government, such requirement shall not be suspended for any ordinance for the annexation of territory or the redrawing of boundaries for city council election districts or wards. In case such requirement is suspended, the ordinances shall be read by title or number and then moved for final passage. Three-fourths of the city council members may require a reading of any such ordinance in full before enactment under either procedure set out in this section, except that in a city having a commission form of government, such reading may be required by a three-fifths majority vote.

(3) Ordinances in a city of the first class shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city, the only title necessary shall be An ordinance of the city of, revising all the ordinances of the city. Under such title all the ordinances may be revised in sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1901, c. 18, § 37, p. 240; Laws 1903, c. 19, § 5, p. 235; R.S.1913, § 4897; C.S.1922, § 4065; C.S.1929, § 16-404; R.S. 1943, § 16-404; Laws 1961, c. 43, § 1, p. 174; Laws 1969, c. 108, § 2, p. 510; Laws 1972, LB 1235, § 1; Laws 1975, LB 172, § 1; Laws 1980, LB 662, § 2; Laws 1989, LB 790, § 2; Laws 1990, LB 966, § 1; Laws 1994, LB 630, § 2; Laws 2003, LB 365, § 1; Laws 2016, LB704, § 73; Laws 2018, LB865, § 3.
Effective date July 19, 2018.

Cross References

For other provisions for revision of ordinances, see section 16-247.

16-405 City council; ordinances; style; publication; emergency ordinances.

The style of ordinances shall be: "Be it ordained by the mayor and city council of the city of," and all ordinances of a general nature shall, within fifteen days after they are passed, be published in a legal newspaper in or of general circulation within the city, or in pamphlet form, to be distributed or sold, as may be provided by ordinance. Every ordinance fixing a penalty or forfeiture for its violation shall, before the ordinance takes effect, be published for at least one week in the manner prescribed in this section. In cases of riots, infectious diseases, or other impending danger, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor immediately upon its first publication as provided in this section.

Source: Laws 1901, c. 18, § 47, p. 245; R.S.1913, § 4898; C.S.1922, § 4066; C.S.1929, § 16-405; R.S.1943, § 16-405; Laws 1971, LB 282, § 1; Laws 2016, LB704, § 74.

16-406 City council; testimony; power to compel; oaths.

The city council or any committee of the members thereof shall have power to compel the attendance of witnesses for the investigation of matters that may come before them. The president or acting president of the city council, or chairperson of such committee for the time being, may administer such requisite oaths. Such city council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

Source: Laws 1901, c. 18, § 94, p. 296; R.S.1913, § 4899; C.S.1922, § 4067; C.S.1929, § 16-406; R.S.1943, § 16-406; Laws 2016, LB704, § 75.

ARTICLE 5

CONTRACTS AND FRANCHISES

Section

- 16-501. Contracts; appropriation a condition precedent.
- 16-502. Officer; extra compensation prohibited; exception.
- 16-503. Contracts; concurrence of majority of city council required; vote of mayor; record.

16-501 Contracts; appropriation a condition precedent.

No contract shall be made by the city council or any committee or member thereof and no expense shall be incurred by any of the officers or departments of the city, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided by law.

Source: Laws 1901, c. 18, § 44, p. 243; R.S.1913, § 4900; C.S.1922, § 4068; C.S.1929, § 16-501; R.S.1943, § 16-501; Laws 2016, LB704, § 76.

16-502 Officer; extra compensation prohibited; exception.

No officer shall receive any pay or perquisites from the city other than his or her salary, as provided by ordinance and the law relating to cities of the first class, and the city council shall not pay or appropriate any money or any valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the

proper scope of the duties of any officer of such city, unless the money or valuable thing is specifically appropriated and ordered by a vote of three-fourths of all the members elected to the city council.

Source: Laws 1901, c. 18, § 45, p. 244; R.S.1913, § 4901; C.S.1922, § 4069; C.S.1929, § 16-502; R.S.1943, § 16-502; Laws 1957, c. 38, § 2, p. 207; Laws 1959, c. 62, § 1, p. 279; Laws 1961, c. 283, § 2, p. 830; Laws 1971, LB 491, § 3; Laws 1972, LB 1209, § 1; Laws 1973, LB 24, § 2; Laws 1983, LB 370, § 7; Laws 2016, LB704, § 77.

Cross References

For other provisions of officers interested in public contracts, see sections 49-14,103.01 to 49-14,103.07.

16-503 Contracts; concurrence of majority of city council required; vote of mayor; record.

On the passage or adoption of every resolution or order to enter into a contract, or accepting of work done under contract, by the mayor or city council, the yeas and nays shall be called and entered upon the record. To pass or adopt any bylaw or ordinance or any such resolution or order, a concurrence of a majority of the whole number of the members elected to the city council shall be required. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council. The requirements of a roll call or viva voce vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each city council member to be readily seen by the public.

Source: Laws 1901, c. 18, § 34, p. 239; R.S.1913, § 4903; C.S.1922, § 4071; C.S.1929, § 16-503; R.S.1943, § 16-503; Laws 1961, c. 43, § 2, p. 174; Laws 1975, LB 172, § 2; Laws 1978, LB 609, § 1; Laws 1980, LB 662, § 3; Laws 1988, LB 625, § 1; Laws 2016, LB704, § 78.

ARTICLE 6

PUBLIC IMPROVEMENTS

(a) CONDEMNATION PROCEEDINGS

Section

- 16-606. Property; condemnation for streets; assessments; levy; collection.
- 16-607. Property; condemnation for other public purposes; bonds; issuance; approval by electors.

(b) STREETS

- 16-609. Improvements; power of city council.
- 16-613. Bridges; repair; duty of county; aid by city, when.
- 16-615. Grade or change of grade; procedure; damages; how ascertained; special assessments.
- 16-617. Improvement districts; power to establish.
- 16-618. Improvement districts; property included.
- 16-619. Improvement districts; creation; notice.
- 16-620. Improvement districts; objections of property owners; effect.
- 16-621. Improvement districts; materials; kind; petition of landowners; bids; advertisement.

PUBLIC IMPROVEMENTS

- Section
16-622. Improvement districts; assessments; how levied; when delinquent; interest; collection; procedure.
16-623. Improvement districts; bonds; interest.
16-624. Improvement districts; creation upon petition; denial; assessments; bonds.
16-625. Intersections; improvements; railways; duty to pave right-of-way.
16-626. Intersection improvement bonds; amount; interest; warrants; partial payments; final payment; interest; restrictions on work.
16-627. Intersections; improvement; cost; tax levy.
16-628. Improvements; tax; when due.
16-630. Curbing and guttering bonds; interest rate; special assessments; how levied.
16-631. Curbing and guttering; cost; paving bonds may include; special assessment.
16-632. Improvement districts; assessments; when authorized; ordinary repairs excepted.
16-633. Improvements; assessments against public lands.
16-634. Improvements; real estate owned by minor or protected person; petition; guardian or conservator may sign.
16-635. Improvements; terms, defined; depth to which assessable.
16-636. Improvement districts; land which city council may include.
16-637. Improvements; special tax; assessments; action to recover.
16-646. Special taxes; lien upon property; collection.
16-647. Special taxes; payment by part owner.
16-649. Improvements; contracts; bids; requirement.
16-650. Public improvements; acceptance by city engineer; approval or rejection by city council.
16-651. Grading and grading districts.
16-652. Grading; special assessments; when delinquent.
16-653. Grading bonds; interest rate.
16-654. Grading upon petition; assessments; bonds.
16-655. Grading bonds; amount; sale; damages; how ascertained.

(d) SIDEWALKS

- 16-661. Construction and repair; materials.
16-662. Construction and repair; failure of property owner; power of city.
16-664. Construction; cost; special assessment; levy; when delinquent; payment.
16-665. Ungraded streets; construction of sidewalks.
16-666. Assessments; levy; certification; collection.

(e) WATER, SEWER, AND DRAINAGE DISTRICTS

- 16-667. Creation of districts; regulations.
16-667.01. Prohibit formation of district; procedure.
16-667.02. Districts; formation; sewer, drainage, or water systems and mains; special assessments; use of other funds.
16-667.03. Sewer, drainage, or water systems and mains; failure to make connections; order; costs assessed.
16-669. Special assessments; when delinquent; interest; future installments; collection.
16-670. Bonds; amount; interest; maturity; special assessments; revenue bonds.
16-671. Construction costs; warrants; power to issue; amount; interest; payment; fund; created.
16-672. Special assessments; equalization; reassessment.

(f) STORM SEWER DISTRICTS

- 16-672.01. Storm sewer districts; ordinance; contents.
16-672.02. Ordinance; hearing; notice.
16-672.03. Ordinance; protest; filing; effect.
16-672.04. Ordinance; adoption.
16-672.05. Construction; notice to contractors, when; contents; bids; acceptance.
16-672.06. Construction; acceptance; notice of assessments.
16-672.07. Assessments; hearing; equalization; delinquent payments; interest.

CITIES OF THE FIRST CLASS

Section

- 16-672.08. Special assessments; levy.
- 16-672.11. Bonds; maturity; interest; rate; contractor; interest; warrants; tax levy.

(g) PUBLIC UTILITIES

- 16-676. Acquisition; operation; bonds; issuance; amount; approval of electors required.
- 16-677. Bonds; sinking funds; tax to provide.
- 16-678. Existing franchises and contracts; rights preserved; tax authorized.
- 16-679. Service; duty to provide; rates; regulation.
- 16-680. Sewerage system; drainage; waterworks; bonds authorized; amount; approval of electors; sewer or water commissioner; authorized.
- 16-681. Municipal utilities; service; rates; regulation.
- 16-682. Municipal utilities; service; delinquent rents; lien; collection.
- 16-683. Construction; bonds; plan and estimate required; extensions, additions, and enlargements.
- 16-684. Construction; operation; location; eminent domain; procedure.
- 16-684.01. Reserve funds; water mains and equipment; when authorized; labor.
- 16-686. Rural lines; when authorized; rates.
- 16-686.01. Natural gas distribution system; service to cities of the second class and villages; when authorized.
- 16-687. Contracts; terms; special election.
- 16-688. Water; unwholesome supply; purification system; authority to install; election; tax authorized.
- 16-691. Board of public works; powers and duties; employees authorized; approval of budget; powers of city council; signing of payroll checks.
- 16-691.01. Board of public works; surplus funds; investment; securities; purchase; sale.
- 16-691.02. Board of public works; surplus funds; disposition; transfer.
- 16-692. Water commissioner; city council member and mayor ineligible.
- 16-693. Bonds; tax authorized; how used.
- 16-694. Sewers; maintenance and repairs; annual tax; service rate in lieu of tax; lien.

(h) PARKS

- 16-695. Parks; swimming pool; stadium; other facilities; acquisition of land; bonds; election; issuance; interest; term.
- 16-696. Board of park commissioners; appointment; number; qualifications; powers and duties; recreation board; board of park and recreation commissioners.
- 16-697. Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.
- 16-697.01. Parks, recreational facilities, and public grounds; acquisition; control.
- 16-697.02. Borrowing; authorized; bonds; approval of electors; mayor and city council; duties; issuance of refunding bonds; approval of electors.

(i) MARKETS

- 16-698. Markets; construction; operation; location; approval of electors; notice; when required.
- 16-699. Regulation of markets.

(j) PUBLIC BUILDINGS

- 16-6,100. Public buildings; construction; bonds authorized; approval of electors required, when.
- 16-6,100.03. Joint city-county building; indebtedness; bonds; principal and interest; in addition to other limitations.
- 16-6,100.05. Joint city-county building; building commission; plans and specifications; personnel; compensation; contracts.

(k) WATERWORKS; GAS PLANT

- 16-6,101. Acquisition; revenue bonds; approval of electors required.

Section

(l) SANITARY SEWER AND WATER MAIN CONNECTION DISTRICT

- 16-6,102. Districts; created.
- 16-6,103. Districts; benefits; certification; connection fee.
- 16-6,104. Construction of sewer and water mains; cost; payment; connection fees; use.
- 16-6,105. Construction of sewer and water mains; cost; revenue bonds; issuance authorized.

(m) FLOOD CONTROL

- 16-6,107. Costs; financing.
- 16-6,108. General obligation bonds; issuance; hearing.
- 16-6,109. Sections; supplemental to other laws.

(a) CONDEMNATION PROCEEDINGS

16-606 Property; condemnation for streets; assessments; levy; collection.

The city council may assess and levy the whole expense and damage incurred in the creation of any street, avenue, or alley upon the real property fronting upon the same and other property nearby that may be benefited thereby in proportions according to benefits. Such assessments and levy shall be made by resolution, at a regular meeting of the city council, and notice of the time of such meeting and that such assessments will be made thereat shall be published in a legal newspaper in or of general circulation within the city ten days before such meeting. Such special taxes shall be due and payable to the city treasurer in thirty days after the assessment and levy. At the time of the next certification to the county clerk for general revenue purposes, such special assessment and levy, so far as not then paid, shall be certified to the county clerk and be put upon the tax list and be collected as other real estate taxes are collected, and paid over to the city treasurer to reimburse the city. Such special taxes shall be a lien on the property upon which assessed and levied from the assessment, and shall bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time due until paid. The proceedings for widening streets shall be the same as herein provided for creating new streets, and shall apply to the widening of streets, alleys, and avenues.

Source: Laws 1903, c. 19, § 7, p. 239; R.S.1913, § 4906; C.S.1922, § 4074; Laws 1923, c. 145, § 1, p. 359; C.S.1929, § 16-603; R.S.1943, § 16-606; Laws 1980, LB 933, § 9; Laws 1981, LB 167, § 10; Laws 2016, LB704, § 79.

16-607 Property; condemnation for other public purposes; bonds; issuance; approval by electors.

(1) Payment of damages assessed for the appropriation of private property for any of the purposes provided in section 19-709 but not provided for in section 16-606 may be made by the sale of the negotiable bonds of the city, and for that purpose the mayor and city council shall have power to borrow money and to pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate two hundred thousand dollars.

(2) No such bonds, referred to in subsection (1) of this section, shall be issued by the city council until the question of issuing the same shall have been submitted to the electors of the city at an election called and held for that

purpose, notice of which election shall have been given by publication once each week three successive weeks prior thereto in a legal newspaper in or of general circulation in such city, and a majority of the electors voting on the proposition shall have voted in favor of issuing such bonds. The proposition shall not be submitted until after the appraisers referred to in section 76-710 have made their report fixing the amount of the damages for the property appropriated. If the proposition fails to carry, it shall be equivalent to a repeal of the ordinance authorizing the appropriation proceedings, and the city shall not be bound in any way on account of the appropriation proceedings referred to in section 19-709.

(3) When the bonds, referred to in subsections (1) and (2) of this section, are for the purpose of purchasing any system or portion of a system already in existence, it shall not be necessary for the city engineer to make or the city council to adopt any plans or specifications for the work already in existence, but only for proposed changes or additional work.

Source: Laws 1923, c. 145, § 1, p. 359; C.S.1929, § 16-603; R.S.1943, § 16-607; Laws 1951, c. 26, § 1, p. 117; Laws 1953, c. 27, § 1, p. 113; Laws 1971, LB 534, § 12; Laws 2016, LB704, § 80.

(b) STREETS

16-609 Improvements; power of city council.

The city council shall have power to open, control, name, rename, extend, widen, narrow, vacate, grade, curb, gutter, park, and pave or otherwise to improve and control and keep in good repair and condition, in any manner it may deem proper, any street, avenue, or alley, or public park or square, or part of either, within the limits of the city or within its extraterritorial zoning jurisdiction, and it may grade partially or to the established grade, or park or otherwise improve any width or part of any such street, avenue, or alley. When the city vacates all or any portion of a street, avenue, or alley, or public park or square, or part of either, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4908; C.S.1922, § 4076; C.S.1929, § 16-605; R.S.1943, § 16-609; Laws 2001, LB 483, § 4; Laws 2016, LB704, § 81.

16-613 Bridges; repair; duty of county; aid by city, when.

All public bridges within a city of the first class, exceeding sixty feet in length, and the approaches thereto, over any stream crossing a county highway, shall be constructed and kept in repair by the county. When any city of the first class has constructed or repaired a bridge over sixty-foot span with approaches thereto, on any county highway within its corporate limits, and has incurred a debt for the same, then the treasurer of the county in which such bridge is located shall pay to the city treasurer seventy-five percent of all bridge taxes collected in such city until such debt and interest upon the same are fully paid. The city council may appropriate a sum not exceeding five dollars per linear foot to aid in the construction of any county bridge within the limits of such

city, or may appropriate a like sum to aid in the construction of any bridge contiguous to such city on a highway leading to such bridge.

Source: Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4912; C.S.1922, § 4080; C.S.1929, § 16-609; R.S.1943, § 16-613; Laws 1955, c. 31, § 1, p. 137; Laws 2016, LB704, § 82.

16-615 Grade or change of grade; procedure; damages; how ascertained; special assessments.

(1) The mayor and city council may establish the grade of any street, avenue, or alley in the city or within a county industrial area as defined in section 13-1111 contiguous to such city. When the grade of any street, avenue, or alley has been established, the grade of all or any part shall not be changed unless the city clerk has sent notice of the proposed change in grade to the owners of the lots or land abutting upon the street, avenue, or alley or part of a street, avenue, or alley where such change of grade is to be made. The notice shall be sent to the addresses of the owners as they appear in the office of the register of deeds upon the date of the mailing of the notice. The notice shall be sent by regular United States mail, postage prepaid, postmarked at least twenty-one days before the date upon which the city council takes final action on approval of the ordinance authorizing the change in grade. The notice shall inform the owner of the nature of the proposed change, that final action by the city council is pending, and of the location where additional information on the project may be obtained. Following the adoption of an ordinance changing the grade of all or any part of a street, avenue, or alley, no change in grade shall be made until the damages to property owners which may be caused by such change of grade are determined as provided in sections 76-704 to 76-724.

(2) For the purpose of paying the damages, if any, so awarded, the mayor and city council may borrow money from any available fund in the amount necessary, which amount, upon the collection of such amount by special assessment, shall be transferred from such special fund to the fund from which it has been borrowed. No street, avenue, or alley shall be worked to such grade or change of grade until the damages so assessed shall be tendered to such property owners or their agents. Before the mayor and city council enter into any contract to grade any such street, avenue, or alley, the damages, if any, sustained by the property owners, shall be ascertained by condemnation proceedings. For the purpose of paying the damages awarded and the costs of the condemnation proceedings, the mayor and city council may levy a special assessment upon the lots and lands abutting upon such street, avenue, or alley, or part thereof, so graded, as adjudged by the mayor and city council to be especially benefited in proportion to such benefits. Such assessment shall be collected as other special assessments.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4914; C.S.1922, § 4082; C.S.1929, § 16-611; R.S.1943, § 16-615; Laws 1951, c. 101, § 51, p. 470; Laws 1969, c. 81, § 1, p. 412; Laws 1995, LB 196, § 1; Laws 2015, LB361, § 20; Laws 2016, LB704, § 83.

16-617 Improvement districts; power to establish.

The mayor and city council of any city of the first class shall have power to make improvements of any street, streets, alley, alleys, or any part of any street,

streets, alley or alleys, in the city, a street which divides the corporate limits of the city and the area adjoining the city, or within a county industrial area as defined in section 13-1111 contiguous to such city, and for that purpose to create suitable improvement districts, which shall be consecutively numbered, and such work shall be done under contract. Such districts may include properties within the corporate limits, adjoining the corporate limits, and within county industrial areas as defined in section 13-1111 contiguous to such cities.

Source: Laws 1901, c. 18, § 48, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 114; R.S.1913, § 4916; Laws 1915, c. 86, § 1, p. 225; Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 191; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-617; Laws 1967, c. 67, § 3, p. 219; Laws 1969, c. 81, § 2, p. 413; Laws 1979, LB 136, § 1; Laws 2016, LB704, § 84.

16-618 Improvement districts; property included.

Any improvement district shall include only portions of different streets, or portions of alleys, or portions of each, which abut or adjoin so that such district, when created, makes up one continuous or extended street or more, except that the district may include a cul de sac, any street, alley, or portion thereof which is closed at one end or which connects with only one other existing street, alley, or portion thereof. Any improvement district may include portions of different streets, or portions of different alleys, or portions of each, if they abut or connect with each other, or if the several portions abut on pavement or gravel already laid, or any other of improvements already laid.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-618; Laws 1980, LB 654, § 1; Laws 2016, LB704, § 85.

16-619 Improvement districts; creation; notice.

The mayor and city council of any city of the first class exercising authority to make improvements as provided under section 16-617 shall, by ordinance, create an improvement district or districts. After the passage, approval, and publication of such ordinance, the city clerk shall publish notice of the creation of any such district or districts one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city.

Source: Laws 1915, c. 86, § 1, p. 225; Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-619; Laws 2016, LB704, § 86.

16-620 Improvement districts; objections of property owners; effect.

If the owners of the record title representing more than fifty percent of the front footage of the property abutting or adjoining any continuous or extended street, cul de sac, or alley of an improvement district created pursuant to section 16-617, or portion thereof which is closed at one end, and who were such owners at the time the ordinance creating such district was published, shall file with the city clerk, within twenty days from the first publication of

such notice, written objections to the improvement of a district, such work shall not be done in such district under such ordinance, but such ordinance shall be repealed. If objections are not filed against any district in the time and manner provided in this section, the mayor and city council shall forthwith proceed to construct such improvement.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-620; Laws 1949, c. 20, § 1, p. 90; Laws 1967, c. 67, § 4, p. 219; Laws 1980, LB 654, § 2; Laws 2016, LB704, § 87.

16-621 Improvement districts; materials; kind; petition of landowners; bids; advertisement.

In advertising for bids for paving, repaving, graveling, or macadamizing, the mayor and city council may provide for bids on different materials and types of construction, and shall in addition provide for asking bids on any material or materials that may be suggested by petition of owners of the record title representing twenty-five percent of the abutting property owners in an improvement district, if such petition is filed with the city clerk before advertisement for bids is ordered. On opening of bids for paving or repaving in any such district, the mayor and city council shall postpone action thereon for a period of not less than ten days. During such period of postponement, the owners of the record title representing a majority of the abutting property owners in a district may file with the city clerk a petition for the use of a particular material for paving for which a bid has been received, in which event a bid on that material shall be accepted and the work shall be done with that material. The regulations as to advertising for bids and opening of bids and postponing of action thereon and the right of selection of materials shall not apply in case of graveling. In case such owners fail to designate the material they desire used in such paving or repaving, or macadamizing, in the manner and within the time provided in this section, the mayor and city council shall determine the material to be used. The mayor and city council may reject all bids and readvertise if, in their judgment, the public interest requires.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4034; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-621; Laws 1965, c. 54, § 1, p. 259; Laws 2016, LB704, § 88.

16-622 Improvement districts; assessments; how levied; when delinquent; interest; collection; procedure.

The cost of making improvements of the streets and alleys within any improvement district created pursuant to section 16-619 or 16-624 shall be assessed upon the lots and lands in such districts specially benefited thereby in proportion to such benefits. The amounts thereof shall, except as provided in sections 19-2428 to 19-2431, be determined by the mayor and city council under section 16-615. The assessment of the special tax for the cost of such improvements, except as provided in this section, shall be levied at one time and shall become delinquent in equal annual installments over such period of years, not to exceed twenty, as the mayor and city council may determine at the time of making the levy, the first such installment to become delinquent in fifty

days after the date of such levy. Each installment, including those for graveling and the construction and replacement of pedestrian walks, plazas, malls, landscaping, lighting systems, and permanent facilities used in connection therewith as provided in this section, except the first, shall draw interest at a rate established by the mayor and city council not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of levy until the levy becomes delinquent. After the levy becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. Should there be three or more installments delinquent and unpaid on the same property the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments. For assessments for graveling alone and without guttering or curbing, one-third of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of the levy of the same, one-third in one year, and one-third in two years.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4917; C.S.1922, § 4085; Laws 1925, c. 50, § 2, p. 193; C.S.1929, § 16-614; Laws 1933, c. 136, § 18, p. 527; C.S.Supp.,1941, § 16-614; R.S.1943, § 16-622; Laws 1953, c. 28, § 1, p. 115; Laws 1955, c. 32, § 1, p. 139; Laws 1959, c. 64, § 1, p. 285; Laws 1959, c. 47, § 1, p. 233; Laws 1967, c. 67, § 5, p. 220; Laws 1972, LB 1213, § 1; Laws 1973, LB 541, § 1; Laws 1980, LB 933, § 10; Laws 1981, LB 167, § 11; Laws 1983, LB 94, § 1; Laws 2016, LB704, § 89; Laws 2017, LB132, § 1.

16-623 Improvement districts; bonds; interest.

For the purpose of paying the cost of improving the streets, avenues, or alleys in an improvement district created pursuant to section 16-619 or 16-624, exclusive of intersections of streets or avenues, or spaces opposite alleys therein, the mayor and city council shall have power and may, by ordinance, cause to be issued bonds of the city, to be called Street Improvement Bonds of District No., payable in not exceeding twenty years from date, and bearing interest, payable either annually or semiannually, with interest coupons attached. In such cases they shall also provide that the special taxes and assessments shall constitute a sinking fund for the payment of the bonds. The entire cost of improving any such street, avenue, or alley, properly chargeable to any lot or land within any such improvement district according to the front footage thereof, may be paid by the owners of such lots or lands within fifty days from the levying of such special taxes, and thereupon such lot or lands shall be exempt from any lien or charge therefor.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4918; C.S.1922,

§ 4086; Laws 1925, c. 50, § 3, p. 194; C.S.1929, § 16-615; Laws 1931, c. 32, § 1, p. 123; C.S.Supp.,1941, § 16-615; R.S.1943, § 16-623; Laws 1967, c. 67, § 6, p. 221; Laws 1969, c. 51, § 27, p. 288; Laws 2016, LB704, § 90; Laws 2017, LB132, § 2.

16-624 Improvement districts; creation upon petition; denial; assessments; bonds.

Whenever the owners of lots or lands abutting upon any street, avenue, or alley within the city, representing three-fourths of the front footage thereon, so that an improvement district when created will make up one continuous or extended thoroughfare or more, shall petition the mayor and city council to make improvement of such street, avenue, or alley without cost to the city, and to assess the entire cost of any such improvements in any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such improvement district or districts, it shall be the duty of the mayor and city council to create the proper improvement district or districts, which shall be consecutively numbered, and to improve the same and to proceed in the same manner and form as provided for in other improvement districts. The mayor and city council shall have power to levy the entire cost of such improvements of any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such district, and to issue Street Improvement Bonds of District No. to pay for such improvements in the same manner and form as provided for in other improvement bonds. Such bonds shall be issued to cover the entire cost of so improving such streets or avenues, intersections of the same, and spaces opposite alleys. If the assessments provided for, or any part thereof, shall fail, or for any reason shall be invalid, the mayor and city council may make other and further assessments upon such lots or lands as may be required to collect from the same the cost of any improvements properly chargeable thereto, as provided in this section. The mayor and city council shall have the discretion to deny the formation of the proposed district when the area to be improved has not previously been improved with a water system, sewer system, and grading of streets. If the mayor and city council should deny a requested improvement district formation, they shall state their grounds for such denial in a written letter to interested parties.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4919; C.S.1922, § 4087; Laws 1925, c. 50, § 4, p. 194; C.S.1929, § 16-616; Laws 1933, c. 27, § 2, p. 203; C.S.Supp.,1941, § 16-616; R.S.1943, § 16-624; Laws 1967, c. 67, § 7, p. 222; Laws 1983, LB 125, § 1; Laws 2016, LB704, § 91.

16-625 Intersections; improvements; railways; duty to pave right-of-way.

The cost of improving the intersections of streets or avenues and spaces opposite alleys in an improvement district, except as specially provided in sections 16-609 to 16-624, shall be paid by the city as provided in sections 16-625 to 16-628. Nothing in sections 16-617 to 16-650 shall be construed to exempt any street or other railway company from improving, with such material as the mayor and city council may order, its whole right-of-way including all space between and one foot beyond the outer rails, at its own cost,

whenever any street or avenue shall be ordered improved by the mayor and city council as provided by law. No street or other railway company shall enter upon or occupy any paved street or avenue, within five years after such paving shall have been completed, until it shall pay into the city treasury the original cost of paving between and one foot beyond the outer rails, which sum shall be credited on the special assessment upon the abutted lots. If the special assessment shall have been paid, then the money shall be paid, by warrant, to the party who has already paid such special assessment.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4920; C.S.1922, § 4088; Laws 1925, c. 50, § 5, p. 195; C.S.1929, § 16-617; R.S. 1943, § 16-625; Laws 1967, c. 67, § 8, p. 223; Laws 2016, LB704, § 92.

16-626 Intersection improvement bonds; amount; interest; warrants; partial payments; final payment; interest; restrictions on work.

For all improvements of the intersections and areas formed by the crossing of streets, avenues, or alleys, and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, the assessment shall be made upon all the taxable property of the city, and for the payment of such improvements, the mayor and city council are hereby authorized to issue improvement bonds of the city in such denominations as they deem proper, to be called Intersection Improvement Bonds, payable in not to exceed twenty years from date of the bonds and to bear interest payable annually or semiannually. Such bonds shall not be issued in excess of the cost of such improvements. For the purpose of making partial payments as the work progresses in making the improvements of streets, avenues, alleys, or intersections and areas formed by the crossing of streets, avenues, or alleys, or one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, warrants may be issued by the mayor and city council upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of bonds authorized by law. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council, and running until the date that the warrant is tendered to the contractor. Nothing in this section shall be construed as authorizing the mayor and city council to make improvements of any intersections or areas formed by the crossing of streets, avenues, or alleys, unless in connection with one or more blocks of any of aforesaid kinds or forms of street improvement of which the improvement of such intersection or areas shall form a part.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4921; Laws 1917, c. 96, § 1, p. 259; C.S.1922, § 4089; Laws 1923, c. 146, § 1, p. 360; Laws 1925, c. 50, § 14, p. 201; C.S.1929, § 16-618; R.S.1943,

§ 16-626; Laws 1965, c. 55, § 1, p. 261; Laws 1967, c. 67, § 9, p. 223; Laws 1969, c. 51, § 28, p. 289; Laws 1974, LB 636, § 1; Laws 2016, LB704, § 93.

16-627 Intersections; improvement; cost; tax levy.

The cost and expense of improving, constructing, or repairing streets, avenues, alleys, and sidewalks, at their intersections, may be included in the special tax levied for the construction or improvement of any one street, avenue, alley, or sidewalk, as may be deemed best by the city council.

Source: Laws 1901, c. 18, § 75, p. 288; R.S.1913, § 4922; C.S.1922, § 4090; C.S.1929, § 16-619; R.S.1943, § 16-627; Laws 1967, c. 67, § 10, p. 224; Laws 2016, LB704, § 94.

16-628 Improvements; tax; when due.

Special taxes as provided in section 16-627 shall be due and may be collected as the improvements are completed in front of or along or upon any block or piece of ground, or at the time the improvement is entirely completed or otherwise, as shall be provided in the ordinance levying the tax.

Source: Laws 1901, c. 18, § 76, p. 288; R.S.1913, § 4923; C.S.1922, § 4091; C.S.1929, § 16-620; R.S.1943, § 16-628; Laws 2016, LB704, § 95.

16-630 Curbing and guttering bonds; interest rate; special assessments; how levied.

If curbing, or curbing and guttering, is done upon any street, avenue, or alley in any improvement district in which paving or other such improvement has been ordered, and the mayor and city council shall deem it expedient to do so, the mayor and city council may, for the purpose of paying the cost of such curbing, or curbing and guttering, cause to be issued bonds of the city, to be called Curbing and Guttering Bonds of Improvement District No., payable in not exceeding ten years from date, bearing interest, payable annually or semiannually, with interest coupons attached. In all cases the mayor and city council shall assess at one time as a special assessment the total cost of such curbing, or curbing and guttering, upon the property abutting or adjacent to the portion of the street, avenue, or alley so improved, according to the special benefits. Such special assessments shall become delinquent the same as the special assessments for paving, repaving, graveling, or macadamizing purposes, draw the same rate of interest, be subject to the same penalties, and may be paid in the same manner, as special assessments for such purpose. The special assessment shall constitute a sinking fund for the payment of such bonds and interest, and the bonds shall not be sold for less than their par value.

Source: Laws 1901, c. 18, § 48, LV, p. 267; Laws 1901, c. 19, § 4, p. 315; Laws 1907, c. 13, § 1, p. 119; R.S.1913, § 4925; Laws 1915, c. 87, § 1, p. 226; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 196; C.S.1929, § 16-622; R.S.1943, § 16-630; Laws 1945, c. 21, § 1, p. 128; Laws 1969, c. 51, § 29, p. 290; Laws 2015, LB361, § 21; Laws 2016, LB704, § 96.

16-631 Curbing and guttering; cost; paving bonds may include; special assessment.

If an improvement district has been established, an improvement thereon constructed, and curbing, or curbing and guttering, is therewith constructed and it becomes necessary to issue and sell street improvement bonds to pay for the cost of construction of the improvement and the curbing, or curbing and guttering, the mayor and city council may, at their discretion, include the cost of curbing, or curbing and guttering, with the cost of other improvements in the improvement district, and issue bonds for the combined cost of the improvement and curbing, or curbing and guttering, in any of the districts, naming the bonds Street Improvement Bonds of District No. The amount of money necessary for the payment of such bonds shall be levied upon and collected from abutting and adjacent property and property specially benefited as a special assessment.

Source: Laws 1915, c. 87, § 1, p. 227; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 197; C.S.1929, § 16-622; R.S.1943, § 16-631; Laws 1967, c. 67, § 11, p. 224; Laws 2015, LB361, § 22; Laws 2016, LB704, § 97.

16-632 Improvement districts; assessments; when authorized; ordinary repairs excepted.

In order to defray the costs and expenses of improvements in any improvement district, the mayor and city council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to or abutting upon the street, avenue, alley, or sidewalk, thus in whole or in part improved or repaired or which may be specially benefited by such improvements. The provisions in this section shall not apply to ordinary repairs of streets or alleys, and the cost of such repairs shall be paid out of the road fund. The mayor and city council are authorized to draw warrants against such fund not to exceed eighty-five percent of the amount levied as soon as levy shall be made by the county board.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4926; C.S.1922, § 4094; Laws 1925, c. 50, § 8, p. 198; C.S.1929, § 16-623; R.S. 1943, § 16-632; Laws 1967, c. 67, § 12, p. 225; Laws 2016, LB704, § 98.

16-633 Improvements; assessments against public lands.

If, in any city of the first class, there shall be any real estate belonging to any county, school district, city, village, or other political subdivision abutting upon the street, avenue, or alley whereon paving or other improvements have been ordered, it shall be the duty of the governing body of the political subdivision to pay such special taxes. In the event of the neglect or refusal of such governing body to pay such taxes, or to levy and collect the taxes necessary to pay for such improvements, the city may recover the amount of such special taxes in a proper action. The judgment thus obtained may be enforced in the usual manner, and the signatures of such political subdivisions to all petitions shall have like force and effect as that of other property owners.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4927; C.S.1922, § 4095; C.S.1929, § 16-624; R.S.1943, § 16-633; Laws 2016, LB704, § 99.

16-634 Improvements; real estate owned by minor or protected person; petition; guardian or conservator may sign.

If, in any city of the first class, there shall be any real estate of any minor or protected person, the guardian or conservator of such minor or protected person may sign any petition referred to by law, and such signature shall have like force and effect as that of other property owners.

Source: Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4928; C.S.1922, § 4096; C.S.1929, § 16-625; R.S.1943, § 16-634; Laws 1975, LB 481, § 3; Laws 2016, LB704, § 100.

16-635 Improvements; terms, defined; depth to which assessable.

(1) For purposes of sections 16-617 to 16-650:

(a) Lot means a lot as described and designated upon the record plat of any city of the first class, or within a county industrial area as defined in section 13-1111 contiguous to such city. If there is no recorded plat of any such city or county industrial area, lot means a lot as described and designated upon any generally recognized map of any such city or county industrial area; and

(b) Land means any subdivided or unplatted real estate in such city or county industrial area.

(2) If the lots and real estate abutting upon that part of the street ordered improved, as shown upon any recorded plat or map, are not of uniform depth, or, if for any reason, it shall appear just and proper to the mayor and city council, they are authorized and empowered to determine and establish the depth to which such real estate shall be charged and assessed with the costs of the improvements, which shall be determined and established according to the benefits accruing to the property by reason of such improvements. Real estate may be so charged and assessed to a greater depth than lots as shown on any such plat or map.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4929; C.S.1922, § 4097; Laws 1925, c. 50, § 9, p. 198; C.S.1929, § 16-626; R.S. 1943, § 16-635; Laws 1967, c. 67, § 13, p. 225; Laws 1969, c. 81, § 3, p. 414; Laws 2016, LB704, § 101.

16-636 Improvement districts; land which city council may include.

The mayor and city council may, in their discretion, include all the real estate to be charged and assessed with the cost of such improvements in the improvement districts described in sections 16-617 to 16-635 but are not required to do so. The mayor and city council may, in their discretion, in determining whether the requisite majority of owners who are authorized in sections 16-617 to 16-635 to petition for improvements, and to object to the improvements and to determine the kind of material to be used therefor, have joined in such petition, determination, or objections, consider and take into account all the owners of real estate to be charged and assessed with the cost of any of such improvements, or only such as own lots, parts of lots, and real estate which, in fact, abut upon the part of the street, avenue, or alley proposed to be so improved. This section, in regard to the depth to which real estate may be charged and

assessed, shall apply to all special taxes that may be levied by the mayor and city council in any such city in proportion to the front footage.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4930; Laws 1917, c. 95, § 1, p. 255; C.S.1922, § 4098; Laws 1925, c. 50, § 10, p. 199; C.S.1929, § 16-627; R.S.1943, § 16-636; Laws 1967, c. 67, § 14, p. 226; Laws 2016, LB704, § 102.

16-637 Improvements; special tax; assessments; action to recover.

Any party feeling aggrieved by any special tax or assessment, or proceeding for improvements, may pay such special taxes assessed and levied upon his, her, or its property, or such installments thereof as may be due at any time before the special tax or assessment shall become delinquent, under protest, and with notice in writing to the city treasurer that he, she, or it intends to sue to recover the special tax or assessment, which notice shall particularly state the alleged grievance and the ground for the grievance. Such party shall have the right to bring a civil action within sixty days to recover so much of the special tax or assessment paid as he, she, or it shows to be illegal, inequitable, and unjust, the costs to follow the judgment or to be apportioned by the court, as may seem proper, which remedy shall be exclusive. The city treasurer shall promptly report all such notices to the city council for such action as may be proper. No court shall entertain any complaint that the party was authorized to make and did not make to the city council, sitting as a board of equalization, nor any complaint not specified in such notice fully enough to advise the city of the exact nature thereof, nor any complaint that does not go to the groundwork, equity, and justness of such tax. The burden of proof to show such tax or part thereof invalid, inequitable, and unjust shall rest upon the party who brings the suit.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907; c. 13, § 1, p. 111; R.S.1913, § 4931; C.S.1922, § 4099; Laws 1925, c. 50, § 11, p. 199; C.S.1929, § 16-628; R.S.1943, § 16-637; Laws 1967, c. 67, § 15, p. 226; Laws 2016, LB704, § 103.

16-646 Special taxes; lien upon property; collection.

In every case of the levy of special taxes, the special taxes shall be a lien on the property on which levied from date of levy and shall be due and payable to the city treasurer thirty days after such levy when not otherwise provided. At the time of the next certification for general revenue purposes to the county clerk, if not previously paid, the special taxes, except paving, repaving, graveling, macadamizing, and curbing or curbing and guttering shall be certified to the county clerk, placed upon the tax list, collected as other real estate taxes are collected, and paid over to the city treasurer. Paving, repaving, graveling, macadamizing, and curbing, or curbing and guttering taxes may be so certified and collected by the county treasurer at the option of such city.

Source: Laws 1901, c. 18, § 77, p. 288; Laws 1903, c. 19, § 14, p. 245; R.S.1913, § 4938; Laws 1917, c. 95, § 1, p. 255; C.S.1922, § 4106; Laws 1925, c. 50, § 12, p. 200; C.S.1929, § 16-635; R.S.1943, § 16-646; Laws 2016, LB704, § 104.

16-647 Special taxes; payment by part owner.

It shall be sufficient in any case to describe the lot or piece of ground as it is platted and recorded although the lot or piece of ground belongs to several persons. If any lot or piece of ground belongs to different persons, the owner of any part thereof may pay his or her portion of the tax on such lot or piece of ground, and his or her proper share may be determined by the city treasurer.

Source: Laws 1901, c. 18, § 78, p. 289; R.S.1913, § 4939; C.S.1922, § 4107; C.S.1929, § 16-636; R.S.1943, § 16-647; Laws 2016, LB704, § 105.

16-649 Improvements; contracts; bids; requirement.

All improvements of any streets, avenues, or alleys in the city for which, or any part thereof, a special tax shall be levied, shall be done by contract with the lowest responsible bidder to be determined by the city council.

Source: Laws 1901, c. 18, § 74, p. 288; R.S.1913, § 4941; C.S.1922, § 4109; Laws 1925, c. 50, § 13, p. 201; C.S.1929, § 16-638; R.S.1943, § 16-649; Laws 1967, c. 67, § 16, p. 227; Laws 2016, LB704, § 106.

16-650 Public improvements; acceptance by city engineer; approval or rejection by city council.

When any improvement is completed according to contract, it shall be the duty of the city engineer to carefully inspect the improvement and if the improvement is found to be properly done, such engineer shall accept the improvement and report his or her acceptance to the board of public works or mayor, who shall report the same to the city council with recommendation that the same be approved or disapproved. The city council may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of or along any block or piece of ground, the city engineer may accept the same in sections from time to time, if found to be done according to the contract, reporting his or her acceptance as in other cases.

Source: Laws 1901, c. 18, § 66, p. 278; R.S.1913, § 4942; C.S.1922, § 4110; C.S.1929, § 16-639; R.S.1943, § 16-650; Laws 2016, LB704, § 107.

16-651 Grading and grading districts.

Whenever the owners of lots and lands abutting upon any street or alley, or part thereof, within the city, representing two-thirds of the feet front abutting upon such part of street or alley desired to be graded, shall petition the city council to grade such street or alley, or part thereof, without cost to the city, the mayor and city council shall order the grading done and assess the costs thereof against the property abutting upon such street or alley or such part thereof so graded. For this purpose the mayor and city council shall create suitable grading districts, which shall be consecutively numbered.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-651; Laws 2016, LB704, § 108.

16-652 Grading; special assessments; when delinquent.

The cost of grading the streets and alleys within any grading district shall be assessed upon the lots and lands specially benefited thereby in such district in proportion to such benefits, to be determined by the mayor and city council under section 16-615, as a special assessment. The special assessment for grading purposes shall be levied at one time and shall become delinquent as follows: One-fifth of the total amount shall become delinquent in fifty days after such levy; one-fifth in one year; one-fifth in two years; one-fifth in three years; and one-fifth in four years. Each of the installments, except the first, shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon, as in the case of other special assessments. The cost of grading the intersections of streets and spaces opposite alleys in any such district shall be paid by the city out of the general fund of such city.

Source: Laws 1901, c. 18, § 73, p. 286; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-652; Laws 1980, LB 933, § 11; Laws 1981, LB 167, § 12; Laws 2015, LB361, § 23.

16-653 Grading bonds; interest rate.

For the purpose of paying the costs of grading the streets and alleys in a grading district, exclusive of the intersection of streets and spaces opposite alleys therein, the mayor and city council shall have power, and may, by ordinance, cause to be issued bonds of the city, to be called District Grading Bonds of District No., payable in not exceeding five years from date and to bear interest, payable annually or semiannually, with interest coupons attached, and that as nearly as possible an equal amount of the bonds shall be made to mature each year, and in such case shall also provide that such special taxes and assessments shall constitute a sinking fund for the payment of such bonds and interest. The entire cost of grading any such street or alley properly chargeable to any lots or lands within any such grading district, according to feet front thereof, may be paid by the owner of such lots or lands within fifty days from the levy of such special taxes or assessments. Upon payment, such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-653; Laws 1945, c. 21, § 2, p. 129; Laws 1969, c. 51, § 30, p. 290; Laws 2016, LB704, § 109.

16-654 Grading upon petition; assessments; bonds.

Whenever the owner of lots and lands abutting upon any street or avenue, alley, or lane, or part thereof, representing three-fourths of the feet front abutting upon any such street, avenue, alley, or lane, or part thereof, shall petition the mayor and city council to grade the street, avenue, alley, or lane, including the intersections of streets, avenues, or lanes and spaces opposite alleys and lanes, without cost to the city, and to assess the entire cost of grading such street, avenue, alley, or lane or part thereof, including the intersections of streets, avenues, or lanes and spaces opposite alleys or lanes, against the lots

and lands abutting upon such street, avenue, alley, or lane, or part thereof, so graded, thereupon the mayor and city council shall create grading districts, make assessments, issue bonds, and proceed in the same manner as in cases of grading provided in sections 16-651 and 16-653. Bonds shall be issued to cover the entire cost of grading both the streets, avenues, or alleys, and the intersections of streets or avenues and spaces opposite alleys.

Source: Laws 1901, c. 18, § 73, p. 287; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-654; Laws 2016, LB704, § 110.

16-655 Grading bonds; amount; sale; damages; how ascertained.

The aggregate amount of bonds issued under sections 16-653 and 16-654 in any one year shall not exceed fifty thousand dollars and shall not be sold for less than their par value. If any assessment or part thereof shall fail or for any reason be invalid, the mayor and city council may make such further assessments upon such lots or lands, as may be required, and collect from the owners the cost of any grading properly chargeable. No street, avenue, alley, or lane shall be so graded until the damages to property owners, if any, shall be ascertained by three disinterested property owners to be appointed by the mayor and city council and the proceedings to be the same in all respects as provided in section 16-615 for cases of change of grade.

Source: Laws 1901, c. 18, § 73, p. 287; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-655; Laws 2016, LB704, § 111.

(d) SIDEWALKS

16-661 Construction and repair; materials.

The mayor and city council may construct and repair, or cause and compel the construction and repair, of sidewalks in such city of such material and in such manner as they may deem necessary.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4945; C.S.1922, § 4114; C.S.1929, § 16-643; R.S.1943, § 16-661; Laws 2016, LB704, § 112.

16-662 Construction and repair; failure of property owner; power of city.

In case the owner or owners of any lot, lots, or lands abutting on any street or avenue, or part thereof, shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands within the time and in the manner as directed and requested by the mayor and city council, after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the mayor and city council shall have power to cause such sidewalk to be constructed or repaired and assess the cost thereof against such property.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4946; C.S.1922, § 4115; C.S.1929, § 16-644; R.S.1943, § 16-662; Laws 2016, LB704, § 113.

16-664 Construction; cost; special assessment; levy; when delinquent; payment.

The mayor and city council may provide for the laying of permanent sidewalks. Upon the petition of any property owner who desires to build such a permanent sidewalk, the mayor and city council may order the sidewalk to be built, the cost of the sidewalk until paid shall be a perpetual lien upon the real estate along which the property owner desires such sidewalk to be constructed, and the city council may assess and levy the costs of the sidewalk against such real estate as a special assessment. The total cost of the building of the permanent sidewalk shall be levied at one time upon the property along which such permanent sidewalk is to be built, and become delinquent as follows: One-seventh of the total cost shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at a rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy, until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. The city council shall pay for the building of such permanent sidewalk out of the general fund. The mayor and city council may pass an ordinance to carry into effect this section.

Source: Laws 1901, c. 18, § 121, p. 303; R.S.1913, § 4948; C.S.1922, § 4117; C.S.1929, § 16-646; R.S.1943, § 16-664; Laws 1963, c. 65, § 1, p. 264; Laws 1965, c. 57, § 1, p. 264; Laws 1980, LB 933, § 12; Laws 1981, LB 167, § 13; Laws 2015, LB361, § 24; Laws 2016, LB704, § 114.

16-665 Ungraded streets; construction of sidewalks.

The mayor and city council may provide for the laying of permanent sidewalks and of temporary plank sidewalks upon the natural surface of the ground without regard to the grade, on streets not permanently improved, and provide for the assessment of the cost therein on the property in front of which such sidewalks shall be laid.

Source: Laws 1901, c. 18, § 48, VII, p. 246; R.S.1913, § 4949; C.S.1922, § 4118; C.S.1929, § 16-647; R.S.1943, § 16-665; Laws 2016, LB704, § 115.

16-666 Assessments; levy; certification; collection.

Assessments made under sections 16-250 and 16-665 shall be made and assessed in the following manner:

(1) Such assessments shall be made by the city council at any meeting by a resolution fixing the costs of the construction or repair of such work along the lot adjacent thereto as a special assessment thereon, the amount charged against the same, which, with the vote thereon by yeas and nays, shall be recorded in the minutes, and notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper in or of general circulation in the city at least ten days before the same shall be held,

or in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed;

(2) All such assessments shall be known as special assessments for improvements, and with the cost of notice shall be levied and collected as a special tax, in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other city taxes, but such special assessment shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and the same shall be certified to the county clerk at the same time as the next certification for general revenue purposes.

Source: Laws 1901, c. 18, § 48, VIII, p. 246; Laws 1903, c. 19, § 8, p. 240; R.S.1913, § 4950; C.S.1922, § 4119; C.S.1929, § 16-648; R.S. 1943, § 16-666; Laws 1980, LB 933, § 13; Laws 1981, LB 167, § 14; Laws 2016, LB704, § 116.

(e) WATER, SEWER, AND DRAINAGE DISTRICTS

16-667 Creation of districts; regulations.

A city of the first class may, by ordinance, lay off the city into suitable districts for the purpose of establishing one or more systems of sewerage, drainage, or water service; provide such sewerage, drainage, and water systems and regulate the construction, repair, and use of such systems; compel all proper connections therewith and branches from other streets, avenues, and alleys, and from private property; and provide a penalty not to exceed one hundred dollars for any obstruction or injury to any sewer, drain, or water main or part thereof, or for failure to comply with the regulations therefor prescribed.

Source: Laws 1901, C. 18, § 48, XXVII, p. 251; Laws 1905, c. 24, § 1, p. 247; Laws 1911, c. 14, § 1, p. 129; Laws 1913, c. 161, § 1, p. 500; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-667; Laws 2016, LB704, § 117.

16-667.01 Prohibit formation of district; procedure.

Upon formation by city ordinance of sewerage, drainage, and water service districts as described by section 16-667, the city shall mail copies of such city ordinance and this section to the owners of the record title of any property abutting upon the streets, avenues, or alleys, or parts thereof, which are within such district within twenty calendar days of the passage of the ordinance. The owners of the record title representing more than fifty percent of the front footage of the property abutting upon the streets, avenues, or alleys, or parts thereof which are within such a proposed district may, by petition, stop formation of such a district. Such written protest shall be submitted to the city council or city clerk within thirty calendar days after publication of notice concerning the ordinance in a legal newspaper in or of general circulation in the city. Publication of such notice shall follow within ten calendar days after passage of such an ordinance. The mailing notice requirement of this section shall be satisfied by mailing a copy of the ordinance and this section by United States mail to the last-known address of the owners of the record title.

Source: Laws 1901, c. 18, § 48, XXVII, p. 251; Laws 1905, c. 24, § 1, p. 247; Laws 1911, c. 14, § 1, p. 129; Laws 1913, c. 161, § 1, p. 500;

R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-667.01; Laws 1981, LB 31, § 1; Laws 2016, LB704, § 118.

16-667.02 Districts; formation; sewer, drainage, or water systems and mains; special assessments; use of other funds.

Upon formation of a district as provided in section 16-667.01, the mayor and city council may order sewer, drainage, or water systems and mains to be laid and constructed in such district and the costs, to the extent of the special benefit, assessed against the lots and parcels of real estate in such district. The cost of sewer, drainage, or water systems or mains in excess of collections from special assessments under this section may be paid out of the sewer fund or water fund, or, if money in such fund is insufficient, out of the general fund of the city.

Source: Laws 1977, LB 483, § 2; Laws 2016, LB704, § 119.

16-667.03 Sewer, drainage, or water systems and mains; failure to make connections; order; costs assessed.

If, after ten days' notice by certified mail or publication in a legal newspaper in or of general circulation in the city, a property owner fails to make such connections and comply with such regulations as the city council may order in accordance with section 16-667.02, the city council may order such connection be made, and assess the cost thereof against the property so benefited.

Source: Laws 1977, LB 483, § 3; Laws 2016, LB704, § 120.

16-669 Special assessments; when delinquent; interest; future installments; collection.

(1) Except as provided in subsection (2) of this section, special assessments for sewer, drainage, or water improvements in a district created pursuant to section 16-667 shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 16-670. The first installment becomes delinquent fifty days after the making of such levy. Each installment, except the first, shall draw interest from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special assessments shall be collected and enforced as in cases of other special assessments and shall be a lien on such real estate from and after the date of the levy thereof. If three or more installments are delinquent and unpaid on the same property, the city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the names of its record title owners and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city and after the fixed date such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments.

(2) If the city incurs no new indebtedness pursuant to section 16-670 for sewer or water improvements in a district, special assessments for sewer or water improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council determines at the time of making the levy to be reasonable and fair.

Source: Laws 1901, c. 18, § 48, XXVII, p. 252; Laws 1905, c. 24, § 1, p. 248; Laws 1911, c. 14, § 1, p. 130; Laws 1913, c. 161, § 1, p. 501; R.S.1913, § 4951; C.S.1922, § 4120; C.S.1929, § 16-649; Laws 1933, c. 136, § 19, p. 528; C.S.Supp.,1941, § 16-649; R.S.1943, § 16-669; Laws 1953, c. 29, § 1, p. 116; Laws 1955, c. 33, § 1, p. 140; Laws 1959, c. 64, § 2, p. 286; Laws 1969, c. 51, § 31, p. 291; Laws 1977, LB 483, § 4; Laws 1980, LB 933, § 14; Laws 1981, LB 167, § 15; Laws 2005, LB 161, § 4; Laws 2015, LB361, § 25; Laws 2016, LB704, § 121.

16-670 Bonds; amount; interest; maturity; special assessments; revenue bonds.

For the purpose of paying the cost of any sewer, drainage, or water improvements in any district created pursuant to section 16-667, the city council shall have the power and may by ordinance cause bonds of the city to be issued called District Sewer Bonds of District No., District Drainage Bonds of District No., or District Water Bonds of District No., payable in not exceeding twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. All special assessments which may be levied upon properties specially benefited by such work or improvements shall, when collected, be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. The cost of such sewer, drainage, or water improvements chargeable by special assessment to the private property within such district may be paid by the owners of such property within fifty days from the levy of such special assessments, and thereupon such property shall be exempt from any lien for the special assessment. Such bonds shall not be sold for less than their par value and if any assessment or any part thereof fails or for any reason is invalid, the city council may make such other and further assessments on such lots or lands as may be required to collect from the lots or lands the cost of any such sewer, drainage, or water improvements properly chargeable to the lots or lands as provided in this section. If such assessments or any part thereof fails or for any reason is invalid, the city council may, without further notice, make such other and further assessments on such lots or lands as may be required to collect from the lots or lands the cost of such improvement properly chargeable to the lots or lands as provided in this section. Nothing in this section shall be construed to prevent a city from paying the cost of sewer, drainage, or water improvements from revenue bonds as otherwise provided by law. When revenue bonds are issued to pay the cost of sewer, drainage, or water improvements, the city council may provide that the collections from any related special assessment district shall be allocated to the gross revenue of the appropriate utility system.

Source: Laws 1901, c. 18, § 48, XXVII, p. 252; Laws 1905, c. 24, § 1, p. 248; Laws 1911, c. 14, § 1, p. 130; Laws 1913, c. 161, § 1, p. 501; R.S.1913, § 4952; C.S.1922, § 4121; C.S.1929, § 16-650; Laws 1937, c. 25, § 1, p. 144; C.S.Supp.,1941, § 16-650; R.S.1943,

§ 16-670; Laws 1969, c. 82, § 1, p. 415; Laws 1969, c. 51, § 32, p. 292; Laws 1977, LB 483, § 5; Laws 2005, LB 161, § 5; Laws 2016, LB704, § 122.

16-671 Construction costs; warrants; power to issue; amount; interest; payment; fund; created.

For the purpose of paying the cost of construction of sewer, drainage, or water systems or mains, or any or all of such sewer, drainage, or water systems or mains, the mayor and city council shall have power to issue warrants in amounts not to exceed the total sum of the special assessments provided for in section 16-670, which such warrants shall bear interest at such rate as the mayor and city council shall order. When there are no funds immediately available for the payment thereof, such warrants shall be registered in the manner provided for the registration of other warrants, and called and paid whenever there are funds available for the purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying such warrants and the interest thereon from the time of their registration until paid, the special assessments pursuant to section 16-670 shall be kept as they are paid and collected in a fund to be designated and known as the Sewer and Water Extension Fund into which all money levied for such improvements shall be paid as collected, and out of which all warrants issued for such purposes shall be paid.

Source: Laws 1913, c. 161, § 1, p. 502; R.S.1913, § 4952; C.S.1922, § 4121; C.S.1929, § 16-650; Laws 1937, c. 25, § 1, p. 145; C.S.Supp.,1941, § 16-650; R.S.1943, § 16-671; Laws 1969, c. 82, § 2, p. 416; Laws 1969, c. 51, § 33, p. 293; Laws 2016, LB704, § 123.

16-672 Special assessments; equalization; reassessment.

Special assessments may be levied by the mayor and city council for the purpose of paying the cost of constructing sewers, drainage, or water systems or mains within the city. Such assessment shall be levied on the real estate lying and being within the sewerage, drainage, or water service district in which such improvements may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the city council sitting as a board of equalization, after notice to property owners is provided as in other cases of special assessment. If the city council, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots or real estate within such sewerage district, according to such other rule as the city council sitting as such board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All assessments made for sewerage, drainage, or water purposes shall be collected as special assessments and shall be subject to the same penalty as other special assessments. If sewers, drainage, or water systems or mains are constructed and any assessments to cover the costs thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and city council, for the purpose of paying the cost of such improvement, may make a reassessment of such costs on lots and real estate lying and being within the district in which such improvements may be situated, to the extent of the benefits to such property by reason of such

improvements. Such reassessment shall be made substantially in the manner provided for making original special assessments as provided in this section. Any sums which may have been paid toward such improvement upon any lots or real estate included in such assessment shall be applied under the direction of the city council to the credit of the persons and property on account of which the sums were paid. If the credits exceed the sum reassessed against such persons and property, the city council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof. The sums so reassessed and not paid under a prior special assessment shall be collected and enforced in the same manner and be subject to the same penalty as other special assessments.

Source: Laws 1901, c. 18, § 67, p. 279; R.S.1913, § 4953; C.S.1922, § 4122; C.S.1929, § 16-651; R.S.1943, § 16-672; Laws 2015, LB361, § 26; Laws 2016, LB704, § 124.

(f) STORM SEWER DISTRICTS

16-672.01 Storm sewer districts; ordinance; contents.

Supplemental to any existing law on the subject, whenever the mayor and city council of any city of the first class shall deem it advisable or necessary to construct storm water sewers and appurtenances in any section of the city and the extraterritorial zoning jurisdiction of the city as established pursuant to section 16-901, together with outlets for such storm water sewers or appurtenances, the advisability and necessity thereof shall be declared in a proposed ordinance, which shall state the kinds of pipe proposed to be used, and shall include concrete pipe and vitrified clay pipe and any other material deemed suitable and shall state the size or sizes and kinds of sewers proposed to be constructed and shall designate the location and terminal points thereof. The ordinance shall refer to the plans and specifications thereof which shall have been made and filed with the city clerk by the city engineer before publication of such ordinance. The city engineer shall also make and file, prior to the publication of such ordinance, an estimate of the total cost of the proposed improvement, which shall be stated in the ordinance. The mayor and city council shall have power to assess, to the extent of special benefits, the cost of such portions of the improvements as are local improvements, upon properties found specifically benefited. The ordinance shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1961, c. 46, § 1, p. 177; Laws 2005, LB 234, § 1; Laws 2016, LB704, § 125.

16-672.02 Ordinance; hearing; notice.

Notice of the time when any ordinance as provided in section 16-672.01 shall be set for consideration before the mayor and city council shall be given by at least two publications in a legal newspaper in or of general circulation in such city, which publication shall state the entire wording of the ordinance. The last publication shall be not less than five days nor more than two weeks prior to the time set for the hearing of objections to the passage of any such ordinance, at which hearing the owners of real property located in such improvement district and which might become subject to assessment for the cost of the contemplated improvement may appear and make objections to the improve-

ment. Thereafter the ordinance may be amended and passed or passed as proposed.

Source: Laws 1961, c. 46, § 2, p. 178; Laws 2016, LB704, § 126.

16-672.03 Ordinance; protest; filing; effect.

If a written protest signed by owners of the property located in an improvement district provided in section 16-672.01 and representing a majority of the front footage which may become subject to assessment for the cost of the improvement is filed with the city clerk within three days before the date of the meeting for the consideration of such ordinance, such ordinance shall not be passed.

Source: Laws 1961, c. 46, § 3, p. 178; Laws 2016, LB704, § 127.

16-672.04 Ordinance; adoption.

Upon compliance with sections 16-672.01 to 16-672.03, the mayor and city council may, by ordinance, order the making and construction of the improvements provided for in section 16-672.01. To adopt such ordinance, a majority of the whole number of members elected to the city council shall be required. If the vote is a tie, the mayor may vote to break such tie.

Source: Laws 1961, c. 46, § 4, p. 179; Laws 2016, LB704, § 128.

16-672.05 Construction; notice to contractors, when; contents; bids; acceptance.

After ordering improvements as provided in section 16-672.01, the mayor and city council may enter into a contract for the construction of the improvements in one or more contracts, but no work shall be done or contract let, if the estimated cost of the improvements, as determined by the city engineer, is in excess of two thousand dollars, until notice to contractors has been published once each week for three weeks in a legal newspaper in or of general circulation in the city. The notice shall state the extent of the work, and the kind of materials to be bid upon, including in such notice all kinds of material mentioned in the ordinance specified in section 16-672.01, and the time when bids will be received, and may set forth the amount of the engineer's estimate of the cost of such improvements. The work provided for in sections 16-672.01 to 16-672.11 shall be done under a written contract with the lowest responsible bidder on the material selected after the bids are opened and in accordance with the requirements of the plans and specifications. The mayor and city council may reject any or all bids received and advertise for new bids in accordance with this section.

Source: Laws 1961, c. 46, § 5, p. 179; Laws 1969, c. 82, § 3, p. 416; Laws 1975, LB 112, § 1; Laws 2016, LB704, § 129.

16-672.06 Construction; acceptance; notice of assessments.

After the completion of work in the construction of public improvements as provided in section 16-672.05, the city engineer shall file with the city clerk a certificate of acceptance, which acceptance shall be approved by the mayor and city council by ordinance. The mayor and city council shall then require the city engineer to make a complete statement of all the costs of such improvement and a plat of the property in the storm water sewer district and a schedule of

the amount proposed to be assessed against each separate parcel of real property in such district, which shall be filed with the city clerk within ten days from the date of the acceptance of the work. The mayor and city council shall then order the clerk to give notice that the plat and schedules are on file in his or her office and that all objections thereto, or to prior proceedings on account of errors, irregularities, or inequalities, not made in writing and filed with the city clerk within twenty days after the first publication of the notice shall be deemed to have been waived. Such notice shall be given by two publications in a legal newspaper in or of general circulation in the city and by notices posted in three conspicuous places in such storm water sewer district. Such notice shall state the time and place where objections, filed as provided in this section, shall be considered by the mayor and city council.

Source: Laws 1961, c. 46, § 6, p. 180; Laws 2016, LB704, § 130.

16-672.07 Assessments; hearing; equalization; delinquent payments; interest.

The hearing on the proposed assessments shall be held by the mayor and city council sitting as a board of adjustment and equalization, at the time and place specified in such notice which shall not be less than twenty days nor more than thirty days after the date of the first publication, unless adjourned. Such session may be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits. If any special assessment is payable in installments, each installment shall draw interest payable annually or semiannually from the date of levy until due. Any delinquent installments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of delinquency until paid.

Source: Laws 1961, c. 46, § 7, p. 180; Laws 1969, c. 51, § 35, p. 294; Laws 1980, LB 933, § 15; Laws 1981, LB 167, § 16; Laws 2016, LB704, § 131.

16-672.08 Special assessments; levy.

After the equalization of special assessments as required under section 16-672.07, the special assessments shall be levied by the mayor and city council upon all lots or parcels of real property within the storm water sewer district, specifically benefited by reason of the improvement. The special assessment may be relieved if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as special assessments for street improvements are enforced in cities of the first class, and any payments thereon, made under previous levies, shall be credited to the property involved. All assessments made for such purposes shall be collected in the same manner as general taxes and shall be subject to the same penalties.

Source: Laws 1961, c. 46, § 8, p. 181; Laws 2016, LB704, § 132.

16-672.11 Bonds; maturity; interest; rate; contractor; interest; warrants; tax levy.

For the purpose of paying the cost of the public improvements as provided in sections 16-672.01 to 16-672.11, the mayor and city council of any city of the first class, after such improvements have been completed and accepted, shall

have the power to issue negotiable bonds of the city to be called storm water sewer district bonds, payable in not exceeding twenty years and bearing interest payable annually, which may either be sold by the city or delivered to the contractor in payment for the work, but in either case for not less than their par value. For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and city council upon certificates of the engineer in charge, showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon the completion and acceptance of the work, a final warrant may be issued for the balance due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as provided in this section. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council and running until the date that the warrant is tendered to the contractor. All special assessments which may be levied upon property specially benefited by such work or improvements in any such storm water sewer district shall, when collected, be set aside and placed in a sinking fund for the payment of the interest and principal of the bonds. There shall be levied annually upon all of the taxable property in the city a tax which, together with such sinking fund derived from special assessments collected, shall be sufficient to meet payments of interest and principal on the bonds as the same become due. Such tax shall be known as the storm water sewer tax, shall be payable annually, shall be collected in the same manner as general taxes, and shall be subject to the same penalties.

Source: Laws 1961, c. 46, § 11, p. 182; Laws 1969, c. 51, § 37, p. 295; Laws 1974, LB 636, § 3; Laws 1992, LB 719A, § 42; Laws 2016, LB704, § 133.

(g) PUBLIC UTILITIES

16-676 Acquisition; operation; bonds; issuance; amount; approval of electors required.

Where the amount of money which would be raised by the tax levy provided for in section 16-675 would be insufficient to establish or pay for a system of waterworks, gas, electric, or other light works, or heating or power system, the mayor and city council may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise to an amount not exceeding two hundred and fifty thousand dollars for the purpose of establishing, constructing, extending, enlarging, or paying for, or maintaining the utilities named in this section. No such bonds shall be issued by the city council until the question of issuing the bonds shall have been submitted to the electors of the city at an election held for such purpose, notice of which shall have been given by publication once each week for three successive weeks prior thereto in a legal newspaper in or of general circulation in such city, and a majority of the electors voting upon the proposition shall have voted in favor of issuing such bonds. However, no election shall be called until a petition signed by at least fifty resident property owners shall be presented to the mayor and city council asking that an election be called for the purpose specified in this section.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 185;

R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-676; Laws 1951, c. 26, § 3, p. 118; Laws 2016, LB704, § 134.

16-677 Bonds; sinking funds; tax to provide.

When bonds shall have been issued by the city as provided under section 16-676, the mayor and city council shall have power to levy annually upon all taxable property of the city such tax as may be necessary for a sinking fund for the payment of accruing interest on such bonds and the principal thereof at maturity, and to provide for the office of water commissioner, power commissioner, light commissioner, or heat commissioner, and to prescribe the powers and duties of such officers.

Source: Laws 1901, c. 18, § 54, p. 273; Laws 1905, c. 23, § 2, p. 245; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 185; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 119; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-677; Laws 2016, LB704, § 135.

16-678 Existing franchises and contracts; rights preserved; tax authorized.

Nothing contained in sections 16-673 to 16-677 shall change or in any way affect existing franchises or existing contracts between any city and any company, corporation, or individual for furnishing the city or its inhabitants with light, power, heat, or water. The mayor and city council shall levy a sufficient tax to pay for such light, power, heat, or water supply in accordance with the terms of such existing contracts, not exceeding four and nine-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city in any one year for any one of the purposes.

Source: Laws 1901, c. 18, § 54, p. 273; Laws 1905, c. 23, § 2, p. 245; Laws 1907, c. 14, § 1, p. 123; Laws 1909, c. 19, § 1, p. 185; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 662; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 119; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-678; Laws 1953, c. 287, § 9, p. 934; Laws 1979, LB 187, § 40; Laws 1992, LB 719A, § 44; Laws 2016, LB704, § 136.

16-679 Service; duty to provide; rates; regulation.

The mayor and city council shall have power (1) to require every individual or private corporation operating such works or plants, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, water, power, light, or heat, and to supply such city with water for fire protection, and with gas, water, power, light, or heat, for other necessary public or private purposes, (2) to regulate and fix the rents or rates of water, power, gas, electric light, or heat, and (3) to regulate and fix the charges for water meters, power meters, gas meters, electric light, or heat meters, or other device or means necessary for

determining the consumption of water, power, gas, electric light, or heat. These powers shall not be abridged by ordinance, resolution, or contract.

Source: Laws 1901, c. 18, § 55, p. 273; R.S.1913, § 4955; C.S.1922, § 4124; C.S.1929, § 16-653; R.S.1943, § 16-679; Laws 2016, LB704, § 137.

16-680 Sewerage system; drainage; waterworks; bonds authorized; amount; approval of electors; sewer or water commissioner; authorized.

The mayor and city council shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate four hundred thousand dollars for the purpose of constructing or aiding in the construction of a system of sewerage. The city may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in any amount, not exceeding in the aggregate seven hundred fifty thousand dollars, for the purpose of constructing culverts and drains for the purpose of deepening, widening, straightening, walling, filling, covering, altering, or changing the channel of any watercourse or any natural or artificial surface waterway or any creek, branch, ravine, ditch, draw, basin, or part thereof flowing or extending through or being within the limits of the city and for the purpose of constructing artificial channels or covered drains sufficient to carry the water theretofore flowing in such watercourse and divert it from the natural channel and conduct the water through such artificial channel or covered drain and fill the old channel. The city may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate two hundred fifty thousand dollars for the purpose of constructing, maintaining, and operating a system of waterworks for the city. No such bonds shall be issued by the city council until the question of issuing the bonds has been submitted to the electors of the city at an election called and held for that purpose, notice of which shall be given by publication in a legal newspaper in or of general circulation in the city at least thirty days before the date of the election, and a majority of the electors voting upon the proposition have voted in favor of issuing such bonds. When any such bonds have been issued by the city, the city may levy annually upon all taxable property of the city such tax as may be necessary for a sinking fund for the payment of the accruing interest upon the bonds and the principal thereof at maturity. The city may provide for the office of sewer commissioner or water commissioner and prescribe the duties and powers of such offices.

Source: Laws 1901, c. 18, § 56, p. 274; Laws 1909, c. 20, § 1, p. 188; Laws 1913, c. 35, § 1, p. 112; R.S.1913, § 4956; Laws 1917, c. 98, § 1, p. 262; C.S.1922, § 4125; Laws 1927, c. 41, § 1, p. 175; C.S.1929, § 16-654; R.S.1943, § 16-680; Laws 1965, c. 59, § 1, p. 273; Laws 1971, LB 534, § 13; Laws 1992, LB 719A, § 45; Laws 2016, LB704, § 138.

16-681 Municipal utilities; service; rates; regulation.

Any city of the first class owning, operating or maintaining its own gas, water, power, light, or heat system shall furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, subject to reasonable rules and regulations, with gas, water, power, light, or heat. Such city shall

regulate and fix the rental or rate for gas, water, power, light, or heat and regulate and fix the charges for water meters, power meters, gas meters, light meters, or heat meters or other device or means necessary for determining the consumption of gas, water, power, light, or heat. Such city shall require water meters, gas meters, light meters, power meters, or heat meters to be used, or other device or means necessary for determining the consumption of gas, water, power, light, or heat.

Source: Laws 1901, c. 18, § 57, p. 275; R.S.1913, § 4957; C.S.1922, § 4126; C.S.1929, § 16-655; Laws 1937, c. 23, § 1, p. 146; C.S.Supp.,1941, § 16-655; R.S.1943, § 16-681; Laws 2016, LB704, § 139.

16-682 Municipal utilities; service; delinquent rents; lien; collection.

Any city of the first class operating a municipal utility under section 16-681 shall have the right and power to tax, assess, and collect from the inhabitants of the city such rent or rents for the use and benefit of water, gas, power, light, or heat used or supplied to them by such waterworks, mains, pump, or extension of any system of waterworks, or water supply, or by such gas, light, or heat system, as the city council shall by ordinance deem just or expedient. With respect to water rates, taxes, or rents only, such water rates, taxes, or rents, when delinquent, shall be a lien upon the premises or real estate upon or for which the water is used or supplied, and such water taxes, rents, or rates shall be paid and collected and such lien enforced in such manner as the city council shall by ordinance direct and provide. Any delinquent water rentals which remain unpaid for a period of three months after they become due may be, by resolution of the city council, assessed against such real estate as a special assessment, which special assessment shall be certified by the city clerk to the county clerk of the county in which the city is situated. The county clerk shall place such special assessments on the tax rolls for collection, subject to the same penalties and to be collected in like manner as other city taxes. The city council shall notify in writing nonoccupying owners of premises or their agents whenever their tenants or lessees are sixty days delinquent in the payment of water rent. Thereafter, if the owner of such real estate or his or her agent within the city shall notify the city council in writing to discontinue water service to the real estate or the occupants thereof, it shall be the duty of the officer in charge of the water department promptly to discontinue such service, and rentals for any water furnished to the occupants of such real estate in violation of such notice shall not be a lien thereon.

Source: Laws 1937, c. 26, § 1, p. 147; C.S.Supp.,1941, § 16-655; R.S. 1943, § 16-682; Laws 2016, LB704, § 140.

16-683 Construction; bonds; plan and estimate required; extensions, additions, and enlargements.

Before submitting any proposition for borrowing money for any of the purposes mentioned in sections 16-673, 16-674, and 16-680, the mayor and city council shall determine upon and adopt a system of sewerage, waterworks, heating, lighting, or power, as the case may be, and shall determine upon and adopt a plan for constructing drains or culverts, or for doing other work upon or in connection with watercourses or waterways as authorized in section 16-680. The mayor and city council shall procure from the city engineer an

estimate of the actual cost of such system, an estimate of the cost of so much thereof as the mayor and city council may propose to construct with the amount proposed to be borrowed, and plans of such system. The estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the times such proposition to borrow money shall be pending. After a system shall have been adopted, no other system or plan shall be adopted in lieu thereof unless authorized by a vote of the people. After construction of any such systems, works, or improvements as are authorized in sections 16-673, 16-674, and 16-680, the city may by vote of the people issue bonds to construct extensions, additions, or enlargements thereof, but not to exceed one hundred twenty-five thousand dollars in any one year, and the total amount of outstanding bonded indebtedness of any such city for the initial construction of any such systems, works, or improvements and for the construction of extensions, additions, and enlargements thereof shall not exceed the respective aggregate limitations of amount imposed under section 16-680.

Source: Laws 1901, c. 18, § 58, p. 275; Laws 1913, c. 35, § 2, p. 113; R.S.1913, § 4958; C.S.1922, § 4127; C.S.1929, § 16-656; R.S. 1943, § 16-683; Laws 1947, c. 27, § 1, p. 132; Laws 2016, LB704, § 141.

16-684 Construction; operation; location; eminent domain; procedure.

When a system of waterworks or sewerage, power, heating, lighting, or drainage shall have been adopted as provided under sections 16-680 to 16-683, the mayor and city council may erect and construct and maintain such system of waterworks or sewerage or power plant, lighting, heating, or drainage, either within or without the corporate limits of the city, make all needful rules and regulations concerning their use, and do all acts necessary for their construction, completion, management, and control not inconsistent with law, including the taking of private property for the public use for their construction and operation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 are applicable.

Source: Laws 1901, c. 18, § 59, p. 275; Laws 1909, c. 19, § 1, p. 186; Laws 1913, c. 35, § 3, p. 114; R.S.1913, § 4959; C.S.1922, § 4128; Laws 1929, c. 43, § 1, p. 187; C.S.1929, § 16-657; R.S.1943, § 16-684; Laws 1951, c. 101, § 54, p. 472; Laws 2016, LB704, § 142.

16-684.01 Reserve funds; water mains and equipment; when authorized; labor.

After the establishment of a system of waterworks in any city of the first class, the mayor and city council may expend any accumulated reserve funds in its water department for the purpose of laying and relaying water mains and the installation of water equipment for fire protection. The city shall have the power and authority to employ the necessary labor therefor without the necessity of advertising for bids or of letting a contract or contracts therefor.

Source: Laws 1945, c. 24, § 1, p. 133; Laws 2016, LB704, § 143.

16-686 Rural lines; when authorized; rates.

Any city of the first class is hereby authorized and empowered, for the purpose of carrying out the provisions of sections 16-684 and 19-2701, to construct, maintain, and operate the necessary rural transmission and distribution lines for a distance of eighteen miles from the corporate limits of such city upon, along, and across any of the public highways of this state under the conditions and provisions prescribed by law for the construction of electric transmission and distribution lines to persons, firms, associations, or corporations. Before the construction of any such rural electric transmission or distribution lines shall be undertaken, such city shall enter into contracts for electric service with persons, firms, associations, or corporations to be served at rates which will produce an annual gross revenue to such city equal to not less than fifteen percent of the cost of such construction. Such city shall thereafter adjust such rates when necessary to produce such gross revenue.

Source: Laws 1929, c. 43, § 1, p. 188; C.S.1929, § 16-657; R.S.1943, § 16-686; Laws 1945, c. 22, § 1, p. 130; Laws 2016, LB704, § 144.

16-686.01 Natural gas distribution system; service to cities of the second class and villages; when authorized.

Any city of the first class owning and operating a natural gas distribution system within such city, and owning and operating its own lateral supply line from its distribution system to a natural gas pipeline source of supply, may by ordinance, where such lateral supply line is so located with reference to any cities of the second class or villages within twenty miles of such city not then being supplied with natural gas and having no other source of gas supply available, make gas service available at retail to such municipalities and for that purpose construct, operate, and maintain connecting lines to and natural gas distribution systems in the municipalities. Such city prior to the construction of such facilities and the rendering of such service shall secure from the respective municipalities to be served a natural gas franchise as provided by law.

Source: Laws 1951, c. 24, § 1, p. 114; Laws 2016, LB704, § 145.

16-687 Contracts; terms; special election.

If bonds to finance the construction or acquisition of waterworks, gas, electric, or other light works, or heating or power system, by the city are not approved under section 16-676 or sections 16-680 to 16-683, or if the city fails to obtain an adequate supply of good water, then the mayor and city council may contract with and procure individuals or corporations to construct and maintain a system of waterworks, power, heating, or lighting plant in such city for any time not exceeding twenty years from the date of the contract, with a reservation to the city of the right to purchase such waterworks, lighting, heating, or power plant at any time after the lapse of ten years from the date of the contract upon payment to such individuals or corporations of any amount to be determined from the contract, not exceeding the cost of the construction of such waterworks, power, lighting, or heating plant. In other respects such contract may be on such terms as may be agreed upon by a two-thirds vote of the city council. No such contract shall be made unless authorized by a majority vote of the legal voters of such city at a special election called for that purpose, notice of which shall be given by publication once each week for three

successive weeks prior thereto in a legal newspaper in or of general circulation in such city.

Source: Laws 1901, c. 18, § 60, p. 276; Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4961; C.S.1922, § 4130; C.S.1929, § 16-659; R.S. 1943, § 16-687; Laws 1951, c. 26, § 4, p. 119; Laws 2016, LB704, § 146.

16-688 Water; unwholesome supply; purification system; authority to install; election; tax authorized.

When any city of the first class has approved bonds and constructed a system of waterworks and obtained an adequate supply of water but the water is turbid or unwholesome during the whole or a portion of the year, the mayor and city council may without having previously made an appropriation therefor, when authorized by a majority vote of the electors voting on the question, which may be submitted at either a special or a general city election, construct, purchase, or enter into a contract for the construction or purchase of and install, establish, operate, and maintain a system of settling reservoirs, a system of filters, or both, for the purpose of clarifying and purifying such water. Notice of such election shall be given by publication once each week three successive weeks prior thereto in a legal newspaper in or of general circulation in such city. The city may levy taxes on all taxable property of such city, not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value thereof in any one year for the payment of the cost thereof.

Source: Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4961; C.S.1922, § 4130; C.S.1929, § 16-659; R.S.1943, § 16-688; Laws 1951, c. 26, § 5, p. 120; Laws 1953, c. 287, § 10, p. 934; Laws 1979, LB 187, § 41; Laws 1992, LB 719A, § 46; Laws 2016, LB704, § 147.

16-691 Board of public works; powers and duties; employees authorized; approval of budget; powers of city council; signing of payroll checks.

The mayor and city council may by ordinance confer upon the board of public works the active direction and supervision of the city's system of waterworks, power plant, or sewerage, heating, or lighting plant and the erection and construction of such system or plant. The board may provide that such duties be performed by such employee or employees as it may direct. The city council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. The board shall make reports to the mayor and city council as often as the mayor and city council may require. In like manner the mayor and city council may confer upon such board the active direction and supervision of the system of streets and alleys.

The mayor and city council may, by ordinance, authorize and empower the board of public works to employ necessary laborers and clerks, to purchase material for the operation and maintenance of the systems, and to draw its orders on the several funds in the hands of the city treasurer to the credit of the various systems in payment of salaries, labor, and material. The mayor and city council shall establish the dollar amount for all extensions and projects above which the board of public works must obtain the approval of the mayor and city council before expending funds. The mayor and city council may, by ordinance, authorize and empower the board of public works to cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of

any public utility operated by the city. For that purpose the board of public works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance. All orders for the disbursement of funds shall be signed by the chairperson and secretary of the board or by any two members of the board who have previously been designated for that purpose by a resolution duly adopted by such board and shall be paid by the city treasurer, except that payroll checks only may be signed by any one member of the board who has previously been designated for that purpose by a resolution duly adopted by the board. Facsimile signatures of board members may be used to sign such orders and checks.

Source: Laws 1913, c. 191, § 1, p. 568; R.S.1913, § 4963; Laws 1917, c. 95, § 1, p. 256; C.S.1922, § 4132; Laws 1923, c. 150, § 1, p. 366; Laws 1925, c. 44, § 3, p. 177; C.S.1929, § 16-661; Laws 1931, c. 30, § 1, p. 120; C.S.Supp.,1941, § 16-661; R.S.1943, § 16-691; Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(1), p. 111; Laws 1953, c. 30, § 1, p. 117; Laws 1963, c. 66, § 1, p. 265; Laws 1978, LB 558, § 1; Laws 1981, LB 171, § 1; Laws 1983, LB 304, § 2; Laws 1993, LB 734, § 24; Laws 2016, LB704, § 148.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

16-691.01 Board of public works; surplus funds; investment; securities; purchase; sale.

Any surplus funds remaining in the hands of the city treasurer, to the credit of such various funds, may be invested by the board of public works, with the approval of the mayor and city council, in accordance with the provisions of sections 16-712, 16-713, and 16-715, in interest-bearing securities of the State of Nebraska or any political subdivision thereof, in certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation, or in interest-bearing securities of the United States upon an order for that purpose drawn by the board of public works upon the city treasurer. Such securities may be purchased, sold, or hypothecated by the board of public works with the approval of the mayor and city council, at their fair market value, and the interest earned by such securities shall be credited to the account of the utility from which the funds paid for the securities were originally drawn. In cities which have not conferred upon any board of public works the active direction and supervision of the city's system of waterworks, power plant, sewerage, and heating or lighting plant, the powers and duties conferred upon the board of public works as to the purchase, sale, and hypothecation of such securities shall be exercised by the city treasurer. Securities so purchased shall be held by the city treasurer who shall provide adequate bond for their safekeeping. When sold, the treasurer shall deliver such securities to the purchaser and collect the sale price.

Source: Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(2), p. 112; Laws 1969, c. 84, § 2, p. 424; Laws 1972, LB 1213, § 2; Laws 2016, LB704, § 149.

16-691.02 Board of public works; surplus funds; disposition; transfer.

The mayor and city council of any city of the first class may, by resolution, direct and authorize the city treasurer to dispose of the surplus electric light, water, or natural gas distribution system funds, or the funds arising from the sale of electric light and water properties, by the payment of outstanding electric light, water, or natural gas distribution system warrants or bonds then due and by the payment of all current amounts required in any revenue bond ordinance in which any part of the earnings of the electric light or water utility or natural gas distribution system are pledged. The excess, if any, after such payments, may be transferred to the general fund of such city at the conclusion of the fiscal year.

Source: Laws 1965, c. 60, § 1, p. 275; Laws 2016, LB704, § 150.

16-692 Water commissioner; city council member and mayor ineligible.

No member of the city council or the mayor shall be eligible to the office of water commissioner during the term for which he or she shall be elected.

Source: Laws 1901, c. 18, § 64, p. 278; R.S.1913, § 4964; C.S.1922, § 4133; C.S.1929, § 16-662; R.S.1943, § 16-692; Laws 2016, LB704, § 151.

16-693 Bonds; tax authorized; how used.

When any bonds shall have been issued by the city for the purpose of constructing or aiding in the construction of a system of waterworks, power plant, sewerage, heating, lighting, or drainage, there shall thereafter be levied annually upon all taxable property of such city a tax not exceeding seven cents on each one hundred dollars for every twenty thousand dollars of bonds so issued, which shall be known as the waterworks tax, power tax, sewerage tax, heat tax, light tax, or drainage tax, as the case may be, and shall be payable only in money. The proceeds of such tax, together with all income received by the city from the payment and collection of water, power, heat, or light, rent, taxes, and rates of assessments, shall first be applied to the payment of the current expenses of waterworks, power plant, heating, or lighting, to improvements, extensions, and additions thereto, and interest on money borrowed and bonds issued for their construction. The surplus, if any, shall be retained for a sinking fund for the payment of such loan or bonds at maturity.

Source: Laws 1901, c. 18, § 65, p. 278; Laws 1913, c. 35, § 4, p. 115; R.S.1913, § 4965; Laws 1917, c. 95, § 1, p. 257; C.S.1922, § 4134; C.S.1929, § 16-663; R.S.1943, § 16-693; Laws 1965, c. 60, § 2, p. 275; Laws 1979, LB 187, § 42; Laws 2016, LB704, § 152.

16-694 Sewers; maintenance and repairs; annual tax; service rate in lieu of tax; lien.

After the establishment of a system of sewerage in any city of the first class, the mayor and city council may, at the time of levying other taxes for city purposes, levy an annual tax of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city for the purpose of creating a fund to be used exclusively for the maintenance and repairing of any sewers in such city. In lieu of the levy of a tax, the mayor and city council may establish, by ordinance, such rates for such sewer service as may be deemed by them to be fair and reasonable, to be

collected from either the owner or the person, firm, or corporation requesting the service at such times, either monthly, quarterly, or otherwise, as may be specified in the ordinance. All such sewer charges shall be a lien upon the premises or real estate for which the sewer service is used or supplied. Such lien shall be enforced in such manner as the city council provides by ordinance. The charges thus made, when collected, shall be placed in a separate fund and used exclusively for the purpose of maintenance and repairs of any sewers in such city.

Source: Laws 1925, c. 46, § 1, p. 186; C.S.1929, § 16-664; Laws 1943, c. 33, § 1, p. 151; R.S.1943, § 16-694; Laws 1947, c. 51, § 1, p. 172; Laws 1951, c. 27, § 1, p. 122; Laws 1953, c. 287, § 11, p. 935; Laws 1979, LB 187, § 43; Laws 1992, LB 719A, § 47; Laws 2016, LB704, § 153.

(h) PARKS

16-695 Parks; swimming pool; stadium; other facilities; acquisition of land; bonds; election; issuance; interest; term.

The mayor and city council of any city of the first class are hereby authorized to acquire by purchase or otherwise and hold in the name of the city, lands, lots, or grounds within or without the limits of the city to be used and improved for parks, parkways, or boulevards. To pay for and improve such lands, lots, or grounds, the mayor and city council are authorized to issue bonds for such purposes, except that no such bonds shall be issued until the question of issuing such bonds shall have been submitted to the electors of the city, at a general election therein, or at a special election appointed and called by the mayor and city council for such purposes, and a majority of electors voting at such election shall have voted in favor of issuing the bonds. Notice of such election shall be given by publication once each week for three successive weeks prior thereto in a legal newspaper in or of general circulation in such city. Such bonds shall be payable in not to exceed twenty years from the date of issuance thereof, and shall bear interest payable annually or semiannually, with interest coupons attached to the bonds. The mayor and city council may at their discretion construct in any park a swimming pool, stadium, or other facilities for public use and recreation and pay for such facilities out of the proceeds of such bonds.

Source: Laws 1901, c. 18, § 80, p. 289; R.S.1913, § 4966; C.S.1922, § 4135; C.S.1929, § 16-665; R.S.1943, § 16-695; Laws 1947, c. 28, § 1, p. 134; Laws 1951, c. 26, § 6, p. 120; Laws 1965, c. 61, § 1, p. 276; Laws 1969, c. 51, § 38, p. 295; Laws 1982, LB 692, § 1; Laws 2016, LB704, § 154.

16-696 Board of park commissioners; appointment; number; qualifications; powers and duties; recreation board; board of park and recreation commissioners.

(1) In each city of the first class which acquires land for a park or parks, there may be a board of park commissioners, who shall have charge of all the parks belonging to the city, with power to establish rules for the management, care, and use of the same. The board of park commissioners shall be composed of not less than three members, but the total number shall be evenly divisible by three, who shall be residents of the city. In the event of a tie vote, the motion

under consideration shall fail to be adopted. They shall be appointed by the mayor and city council at their first regular meeting in January each year except for the original board which may be appointed any time. At the time of the first appointment, one-third of the number to be appointed shall be appointed for a term of one year, one-third for a term of two years, and the rest shall be appointed for a term of three years, which term shall be computed from the first meeting in the preceding January. After the appointment of the original board it shall be the duty of the mayor and city council to appoint or reappoint one-third of the board each year for a term of three years to commence at the time of appointment at the first meeting in January. Each member shall serve until his or her successor is appointed and qualified. A vacancy occurring on such board by death, resignation, or disqualification of a member shall be filled for the remainder of such term at the next regular meeting of the city council. A majority of all the members of the board of park commissioners shall constitute a quorum. It shall be the duty of the board of park commissioners to lay out, improve, and beautify all grounds owned or acquired for public parks, and employ helpers and laborers as may be necessary for the proper care and maintenance of such parks, and the improvement and beautification thereof, to the extent that funds may be provided for such purposes. The members of the board, at its first meeting in each year, shall elect one of their own members as chairperson of such board. Before entering upon his or her duties each member of the board shall take an oath, to be filed with the city clerk, that he or she will faithfully perform the duties of the office and will not in any manner be actuated or influenced therein by personal or political motives.

(2) The board of park commissioners may also be constituted by the mayor and city council as an ex officio recreation board. When so constituted, such recreation board shall have the duty and authority to promote, manage, supervise, and control all recreation activities supported financially by such city to the extent funds are available.

(3) The mayor and city council may abolish the board of park commissioners, if one has been appointed as provided in this section, and may establish a board of park and recreation commissioners, who shall have charge of all parks belonging to the city and all recreational activities supported financially by the city, with power to establish rules for the management, care, supervision, and use of such parks. The board of park and recreation commissioners shall be appointed to such terms of office and in such numbers as provided in this section for appointment of a board of park commissioners. It shall be the duty of the board of park and recreation commissioners to lay out, improve, beautify, and design all grounds, bodies of water, and buildings owned or acquired for public parks and recreational facilities, and employ such persons as may be necessary for the proper direction, care, maintenance, improvement, and beautification thereof, and for program planning and leadership of recreational activities, to the extent that funds may be provided for such purposes. The board shall also have the duty of continued study and promotion of the needs of such city for additional park and recreational facilities. Members of the board of park and recreation commissioners at its first meeting in each year shall elect one of its own members as chairperson of the board. Before entering upon his or her duties each member of the board shall take an oath, to be filed with the city clerk, that he or she will faithfully perform the duties of the office

and will not in any manner be actuated or influenced therein by personal or political motives.

Source: Laws 1901, c. 18, § 81, p. 290; Laws 1901, c. 19, § 8, p. 318; R.S.1913, § 4967; C.S.1922, § 4136; C.S.1929, § 16-666; R.S. 1943, § 16-696; Laws 1969, c. 85, § 1, p. 427; Laws 1969, c. 86, § 1, p. 429; Laws 1971, LB 559, § 1; Laws 2004, LB 937, § 1; Laws 2005, LB 626, § 2; Laws 2016, LB704, § 155.

16-697 Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.

(1) For the purpose of (a) providing funds for amusements and recreation, (b) providing funds for laying out, purchasing, improving, and beautifying parks and public grounds, and (c) providing for the payment of the salaries and wages of employees of the board of park commissioners or the board of park and recreation commissioners, the mayor and city council shall, each year at the time of making the levy for general city purposes, make a levy upon the taxable value of all the taxable property in such city. Such levy shall be collected and paid into the city treasury and shall constitute the park fund or park and recreation fund as the case may be.

(2) All accounts against the park fund or park and recreation fund of such city, provided for by subsection (1) of this section, for salaries and wages of the employees and all other expenses of such parks or recreational facilities shall be audited and allowed by the park or park and recreation commissioners. All warrants thereon shall be drawn only by the chairperson of the commissioners. Warrants so drawn shall be paid by the city treasurer out of such fund.

(3) The park or park and recreation commissioners of such city, as the case may be, shall enter into any contracts of any nature involving an expenditure in accordance with the policies of the city council.

(4) The chairperson of the board of park or park and recreation commissioners shall, on January 1 and July 1 of each year, file with the city clerk an itemized statement of all the expenditures of the board.

Source: Laws 1901, c. 18, § 81, p. 290; Laws 1901, c. 19, § 8, p. 318; R.S.1913, § 4968; Laws 1915, c. 88, § 1, p. 228; C.S.1922, § 4137; Laws 1925, c. 52, § 1, p. 204; C.S.1929, § 16-667; Laws 1933, c. 26, § 1, p. 200; Laws 1935, c. 30, § 1, p. 134; C.S.Supp.,1941, § 16-667; R.S.1943, § 16-697; Laws 1953, c. 31, § 1, p. 119; Laws 1969, c. 86, § 2, p. 431; Laws 1979, LB 187, § 44; Laws 1992, LB 719A, § 48; Laws 2016, LB704, § 156.

16-697.01 Parks, recreational facilities, and public grounds; acquisition; control.

Any city of the first class is hereby authorized and empowered to take land in fee, within or without its corporate limits, by donation, gift, devise, purchase, or appropriation, and to hold, improve and control such land for parks, recreational facilities, and public grounds. The jurisdiction and police power of the mayor and city council of any city that shall acquire any such real estate shall be at once extended over such real estate. The mayor and city council shall have power to enact bylaws, rules, and ordinances for the protection, preserva-

tion, and control of any real estate acquired under this section and provide suitable penalties for the violation of any such bylaws, rules, or ordinances.

Source: Laws 1899, c. 15, § 1, p. 80; R.S.1913, § 5271; C.S.1922, § 4490; C.S.1929, § 19-101; R.S.1943, § 19-101; Laws 1969, c. 86, § 6, p. 433; Laws 2016, LB704, § 157.

16-697.02 Borrowing; authorized; bonds; approval of electors; mayor and city council; duties; issuance of refunding bonds; approval of electors.

(1) The mayor and city council of any city of the first class shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise, for the purpose of purchasing and improving land for parks, recreational facilities, and public grounds, authority therefor having first been obtained by a majority vote of the qualified electors of the city voting on such question at any general city election of such city or at an election called for that purpose, upon a proposition or propositions submitted in the manner provided by law for the submission of propositions to aid in the construction of railroads and other works of internal improvement.

(2) The mayor and city council shall identify the specific type of security pledge securing any financing or bond issue in the proposition to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise for the purposes described in subsection (1) of this section. The proposition with language identifying the specific type of security pledged to be used shall be placed on the ballot to be voted on by the qualified electors of the city.

(3) If the mayor and city council decide to issue refunding bonds under section 10-142 for bonds issued pursuant to this section that change the specific type of security pledged from revenue bonds to general obligation bonds, authority therefor must first be obtained by a majority vote of the qualified electors of the city voting on such refinancing proposition at any general city election of such city or at an election called for that purpose.

Source: Laws 1899, c. 15, § 2, p. 81; Laws 1913, c. 190, § 1, p. 567; R.S.1913, § 5272; C.S.1922, § 4491; C.S.1929, § 19-102; R.S. 1943, § 19-102; Laws 1969, c. 86, § 7, p. 433; Laws 2016, LB378, § 1; Laws 2016, LB704, § 158.

(i) MARKETS

16-698 Markets; construction; operation; location; approval of electors; notice; when required.

Any city of the first class may, by ordinance, (1) purchase and hold grounds for and erect and establish market houses and market places, and regulate and govern such market houses and market places, (2) contract with any person or persons or companies or corporations for the erection and regulation of such market houses and market places on such terms and conditions and in such manner as the city council may prescribe, and (3) raise all necessary revenue for the purposes provided in this section. The city council may provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city, in connection with such market houses and places. It may locate such market houses, market places, and buildings on any street, alley, or public grounds, or on any land

purchased for such purposes, and establish, alter, and change the channel of streams and watercourses within the city, and bridge such streams and watercourses. Any such improvement costing in the aggregate a sum greater than two thousand dollars shall not be authorized until the ordinance providing for the improvement shall first be submitted to and ratified by a majority of the legal voters of such city voting thereon, notice of which shall be given by publication once each week for three successive weeks in a legal newspaper in or of general circulation in such city.

Source: Laws 1901, c. 18, § 48, XXVI, p. 251; R.S.1913, § 4969; C.S.1922, § 4138; C.S.1929, § 16-668; R.S.1943, § 16-698; Laws 1951, c. 26, § 7, p. 121; Laws 2016, LB704, § 159.

16-699 Regulation of markets.

No charge or assessment of any kind shall be made or levied on any vehicle or on the owner of any vehicle bringing produce or provisions to any market place in the city, or standing in or occupying a place in any of the market places of the city, or in the street contiguous to such market places on market days. The mayor and city council shall have full power to prescribe the kind and description of articles which may be sold and the stand or place to be occupied by the vendors and may authorize the immediate seizure and arrest and removal from the markets of any person violating the regulations as established by ordinance, together with any article of produce in his or her possession, and the immediate seizure and destruction of tainted or unsound meat, provisions, or other articles of food.

Source: Laws 1901, c. 18, § 36, p. 239; R.S.1913, § 4970; C.S.1922, § 4139; C.S.1929, § 16-669; R.S.1943, § 16-699; Laws 2016, LB704, § 160.

(j) PUBLIC BUILDINGS

16-6,100 Public buildings; construction; bonds authorized; approval of electors required, when.

The mayor and city council shall have the power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise for the purpose of acquiring, by purchasing or constructing, including site acquisition, or aiding in the acquiring of a city hall, jail, auditorium, buildings for the fire department, and other public buildings, including the acquisition of buildings authorized to be acquired by Chapter 72, article 14, and including acquisition of buildings to be leased in whole or in part by the city to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings. No such bonds shall be issued until after the same have been authorized by a majority vote of the electors of the city voting on the proposition of their issuance at an election called for the submission of such proposition and of which election notice of the time and place thereof shall have been given by publication in a legal newspaper in or of general circulation in the city three successive weeks prior thereto. If the building to be acquired is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska or other governmental agencies and if the combined area of the

building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building and if the cost of acquisition does not exceed two million dollars, no such vote of the electors will be required.

Source: Laws 1911, c. 15, § 1, p. 132; R.S.1913, § 4971; Laws 1915, c. 89, § 1, p. 229; Laws 1919, c. 39, § 1, p. 122; C.S.1922, § 4140; C.S.1929, § 16-670; Laws 1941, c. 23, § 1, p. 116; C.S.Supp.,1941, § 16-670; R.S.1943, § 16-6,100; Laws 1945, c. 23, § 1, p. 131; Laws 1947, c. 30, § 1, p. 138; Laws 1947, c. 28, § 2, p. 135; Laws 1969, c. 87, § 1, p. 436; Laws 1972, LB 876, § 1; Laws 2016, LB704, § 161.

16-6,100.03 Joint city-county building; indebtedness; bonds; principal and interest; in addition to other limitations.

The amount of indebtedness authorized to be incurred by any county or city of the first class for the payment of principal and interest for the bonds authorized by the provisions of sections 16-6,100.01 to 16-6,100.07 shall be in addition to and over and above any limits provided by law.

Source: Laws 1953, c. 32, § 3, p. 121; Laws 2016, LB704, § 162.

16-6,100.05 Joint city-county building; building commission; plans and specifications; personnel; compensation; contracts.

The building commission shall cause to be prepared building plans and specifications for the joint city-county building, and may employ architects, engineers, draftsmen, and such clerical help as may be deemed necessary for the purpose of preparing such plans and specifications. The compensation of such personnel shall be fixed by the commission and shall be paid in the same proportion as is determined for defraying the cost as set forth in section 16-6,100.02. The contract for erecting the building, for the equipment, and for furnishings shall be let by the commission in the same manner as for other public buildings. The members of the commission shall receive no compensation for their services as members of the commission.

Source: Laws 1953, c. 32, § 5, p. 121; Laws 2016, LB704, § 163.

(k) WATERWORKS; GAS PLANT

16-6,101 Acquisition; revenue bonds; approval of electors required.

Supplemental to any existing law on the subject and in lieu of the issuance of general obligation bonds, or the levying of taxes upon property, as by law provided, any city of the first class may construct, purchase, or otherwise acquire a waterworks plant or a water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, either within or without the corporate limits of such city, and real and personal property needed or useful in connection therewith, and pay the cost thereof by pledging and hypothecating the revenue and earnings of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by such city. In the exercise of the authority granted in this section, any city may issue and sell revenue bonds or debentures and enter into such contracts in connection therewith as may be proper and necessary. Such

revenue bonds or debentures shall be a lien only upon the revenue and earnings of the waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by such city. No such city shall pledge or hypothecate the revenue and earnings of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, nor issue revenue bonds or debentures, as authorized in this section, until the proposition relating thereto has been submitted in the usual manner to the qualified voters of such city at a general or special election and approved by a majority of the electors voting on the proposition submitted. Such proposition shall be submitted whenever requested, within thirty days after a sufficient petition signed by the qualified voters of such city equal in number to twenty percent of the vote cast at the last general municipal election held therein, shall be filed with the city clerk. Three weeks' notice of the submission of the proposition shall be given by publication in a legal newspaper in or of general circulation in such city. The requirement for a vote of the electors, however, shall not apply when such city seeks to pledge or hypothecate such revenue or earnings or issues revenue bonds or debentures solely for the maintenance, extension, or enlargement of any waterworks plant or water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned by such city.

Source: Laws 1937, c. 29, § 1, p. 151; Laws 1941, c. 22, § 1, p. 113; C.S.Supp.,1941, § 16-671; R.S.1943, § 16-6,101; Laws 2016, LB704, § 164.

(l) SANITARY SEWER AND WATER MAIN CONNECTION DISTRICT

16-6,102 Districts; created.

In addition to any other provision of state law, whenever the mayor and city council of any city of the first class shall deem it necessary and advisable to construct sanitary sewer mains or water mains, the mayor and city council may, by ordinance passed by not less than three-fourths of all members of the city council, create a district or districts to be known as sanitary sewer connection districts or water connection districts and such district or districts may include properties within the corporate limits of the city and within the city's extraterritorial zoning jurisdiction. Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the outer boundaries of the district or districts in which it is proposed to construct the sewer mains or water mains.

Source: Laws 1969, c. 73, § 1, p. 397; Laws 2016, LB704, § 165.

16-6,103 Districts; benefits; certification; connection fee.

After sanitary sewer mains or water mains have been constructed in the districts as provided under section 16-6,102, the cost thereof shall be reported to the city council and the city council, sitting as a board of equalization, shall determine benefits to abutting property. The special benefits as determined by the board of equalization shall not be levied as special assessments against the property within the district but shall be certified in a resolution of the city council to the register of deeds of the county in which the improvement district is constructed. A connection fee in the amount of the benefit accruing to the

property in the district shall be paid to the city at the time such property becomes connected to the sewer main or water main. The city shall provide that no property thus benefited by sanitary sewer or water main improvements shall be connected to the sanitary sewer or water mains until the connection fee is paid.

Source: Laws 1969, c. 73, § 2, p. 397; Laws 2016, LB704, § 166.

16-6,104 Construction of sewer and water mains; cost; payment; connection fees; use.

For the purpose of paying the cost of any sanitary sewer mains or water mains constructed in a connection district created under section 16-6,102, the mayor and city council may spend funds accumulated in any sanitary sewer or water department surplus funds of the city. The connection fees collected by any such city for properties connecting to such sanitary sewer mains or water mains shall be paid into the sanitary sewer or water department surplus fund to replenish such funds for the construction costs.

Source: Laws 1969, c. 73, § 3, p. 398; Laws 2016, LB704, § 167.

16-6,105 Construction of sewer and water mains; cost; revenue bonds; issuance authorized.

As an alternative to spending surplus funds as provided in section 16-6,104, or to pay for part of the construction of sanitary sewer mains or water mains, the mayor and city council may issue revenue bonds. Such revenue bonds shall not impose any general liability upon the city but shall be secured by the revenue received by the city for the operation of the sanitary sewer system or waterworks system, and the amount of connection fees collected by the city for connections to such sanitary sewer mains or water mains. Such revenue bonds shall be sold for not less than par and bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature. The amount of such revenue bonds, either issued or outstanding, shall not be included in computing the maximum amount of bonds which the city may be authorized to issue under its charter or any statute of this state.

Source: Laws 1969, c. 73, § 4, p. 398; Laws 1980, LB 933, § 17; Laws 1981, LB 167, §18; Laws 2016, LB704, § 168.

(m) FLOOD CONTROL

16-6,107 Costs; financing.

For carrying out the purposes and powers set forth in section 16-6,106, including payment of the cost thereof, the city may:

(1) Borrow money and issue its negotiable general obligation bonds upon such terms and conditions as the mayor and city council may determine, without a vote of the electors;

(2) Levy a tax upon all taxable property in the city to pay such bonds and interest thereon and establish a sinking fund for such payment;

(3) Issue warrants to contractors and others furnishing services or materials or in satisfaction of other obligations created under section 16-6,106, such warrants to be issued in such amounts and on such terms and conditions as the

mayor and city council shall determine, which warrants shall be redeemed and paid upon the sale of bonds or receipt of other funds available for such purpose;

(4) Receive gifts, grants, and funds from any source, including, but not limited to, state, federal, or private sources; and

(5) Cooperate and contract with any other government, governmental agency, or political subdivision, whether state or federal, and any person or organization providing funds for the purposes covered by sections 16-6,106 to 16-6,109.

Source: Laws 1971, LB 57, § 2; Laws 2016, LB704, § 169.

16-6,108 General obligation bonds; issuance; hearing.

The powers granted by sections 16-6,106 to 16-6,109 may be exercised in whole or in part and from time to time as the city council may in its discretion determine but before general obligation bonds are issued for the purposes of sections 16-6,106 to 16-6,109, the city council shall hold a public hearing after three weeks' notice published in a legal newspaper in or of general circulation in such city, and the referendum provisions of sections 18-2501 to 18-2536 shall apply to any ordinance or resolution authorizing issuance of such bonds. The program for implementation of the plan may be adopted and carried out in parts, sections, or stages.

Source: Laws 1971, LB 57, § 3; Laws 1982, LB 807, § 42; Laws 2016, LB704, § 170.

16-6,109 Sections; supplemental to other laws.

The powers granted by sections 16-6,106 to 16-6,109 are independent of and in addition to all other grants of powers on the same or related subjects but may be exercised jointly with or supplemented by the powers granted by existing state law, including, but not limited to, sections 16-667 to 16-672.11, 16-680, 16-683, 16-693, 18-401 to 18-411, 18-501 to 18-512, 19-1305, 23-320.07 to 23-320.13, and 31-501 to 31-553 and the Combined Improvement Act.

Source: Laws 1971, LB 57, § 4; Laws 2003, LB 52, § 1; Laws 2016, LB704, § 171.

Cross References

Combined Improvement Act, see section 19-2415.

ARTICLE 7

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section

- 16-701. Fiscal year, commencement.
- 16-702. Property tax; general purposes; levy; collection; maximum authorized; specific purposes; additional levies.
- 16-704. Annual appropriation bill; contents.
- 16-706. Expenditures; how made; limitations; diversion of funds; violation; penalty; payment of judgments.
- 16-707. Board of equalization; meetings; notice; special assessments; grounds for review.
- 16-708. Special assessments; invalidity; reassessment.
- 16-709. Special assessments; irregularities; correction.
- 16-711. Road tax; how expended.

Section

- 16-712. City funds; depositories; payment; conflict of interest.
- 16-713. City funds; certificates of deposit; time deposits; security required.
- 16-714. City funds; depository bond; conditions.
- 16-716. City funds; depositories; maximum deposits; liability of treasurer.
- 16-717. City treasurer; books and accounts.
- 16-718. City treasurer; warrants; issuance; delivery.
- 16-719. City treasurer; conversion of funds; penalty.
- 16-720. City treasurer; report; warrant register.
- 16-721. City funds; transfer; when authorized.
- 16-722. City receipts and expenditures; publication.
- 16-723. Taxes; payable in cash; sinking fund; investment; matured bonds or coupons; payment.
- 16-727. Claims; disallowance; appeal to district court; procedure.
- 16-728. Claims; allowance; appeal by taxpayer.
- 16-729. Claims; allowance or disallowance; appeal; transcript; trial.

16-701 Fiscal year, commencement.

The fiscal year of each city of the first class and of any public utility of a city of the first class commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.

Source: Laws 1901, c. 18, § 40, p. 242; R.S.1913, § 4972; C.S.1922, § 4141; C.S.1929, § 16-701; R.S.1943, § 16-701; Laws 1963, c. 67, § 1, p. 267; Laws 1995, LB 194, § 1; Laws 2016, LB704, § 172.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

16-702 Property tax; general purposes; levy; collection; maximum authorized; specific purposes; additional levies.

(1) Subject to the limits in section 77-3442, the mayor and city council shall have power to levy and collect taxes for all municipal purposes on the taxable property within the corporate limits of the city. All city taxes, except special assessments otherwise provided for, shall become due on the first day of December of each year.

(2) At the time provided for by law, the city council shall cause to be certified to the county clerk the amount of tax to be levied for purposes of the adopted budget statement on the taxable property within the city for the year then ensuing, as shown by the assessment roll for such year, including all special assessments and taxes assessed as provided by law. The county clerk shall place the same on the proper tax list to be collected in the manner provided by law for the collection of county taxes in the county where such city is situated.

(3) In all sales for delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or lien on the same property, the sales shall be for all the delinquent taxes. Such sales and all sales made under and by virtue of this section or the provisions of law referred to in this section shall be of the same validity and, in all respects, shall be deemed and treated as though such sale had been made for the delinquent county taxes exclusively.

(4) The maximum amount of tax which may be certified, assessed, and collected for purposes of the adopted budget statement shall not require a tax levy in excess of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city. Any special

assessments, special taxes, amounts assessed as taxes, and such sums as may be authorized by law to be levied for the payment of outstanding bonds and debts may be made by the city council in addition to the levy of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city. The city council may certify a further amount of tax to be levied which shall not require a tax levy in excess of seven cents on each one hundred dollars upon the taxable value of the taxable property within such city for the purpose of establishing the sinking fund or sinking funds authorized by sections 19-1301 to 19-1304, and in addition thereto, when required by section 18-501, a further levy of ten and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city may be imposed.

(5) Nothing in this section shall be construed to authorize an increase in the amounts of levies for any specific municipal purpose or purposes elsewhere limited by law, whether limited in specific sums or by tax levies.

Source: Laws 1901, c. 18, § 82, p. 291; Laws 1903, c. 19, § 16, p. 245; R.S.1913, § 4973; C.S.1922, § 4142; Laws 1925, c. 37, § 1, p. 145; C.S.1929, § 16-702; Laws 1937, c. 176, § 3, p. 694; Laws 1939, c. 12, § 5, p. 82; Laws 1941, c. 157, § 5, p. 610; C.S.Supp.,1941, § 16-702; R.S.1943, § 16-702; Laws 1947, c. 29, § 2, p. 136; Laws 1953, c. 287, § 12, p. 936; Laws 1957, c. 39, § 1, p. 210; Laws 1969, c. 145, § 16, p. 681; Laws 1979, LB 187, § 45; Laws 1987, LB 441, § 1; Laws 1992, LB 1063, § 8; Laws 1992, Second Spec. Sess., LB 1, § 8; Laws 1996, LB 1114, § 28; Laws 2016, LB704, § 173.

16-704 Annual appropriation bill; contents.

Each city of the first class shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill", in which the city may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such city.

Source: Laws 1901, c. 18, § 41, p. 242; R.S.1913, § 4974; Laws 1917, c. 95, § 1, p. 257; C.S.1922, § 4143; Laws 1925, c. 37, § 2, p. 146; C.S.1929, § 16-703; R.S.1943, § 16-704; Laws 1993, LB 734, § 25; Laws 1995, LB 194, § 2; Laws 2016, LB704, § 174.

Cross References

Nebraska Budget Act, see section 13-501.

16-706 Expenditures; how made; limitations; diversion of funds; violation; penalty; payment of judgments.

The mayor and city council shall not have power to appropriate, issue, or draw any order or warrant on the city treasurer for money, unless the order or warrant has been appropriated or ordered by ordinance or the claim for the payment of which such order or warrant is issued has been allowed according to sections 16-726 to 16-729, and a fund has been provided in the adopted budget statement out of which such claim is payable. Any transfer or diversion of the money or credits from any of the funds to another fund or to a purpose other and different from that for which proposed, except as provided in section 16-721, shall render any city council member voting therefor or any officer of the city participating therein guilty of a misdemeanor, and any person shall,

upon conviction thereof, be fined twenty-five dollars for each offense, together with costs of prosecution. Should any judgment be obtained against the city, the mayor and finance committee, with the sanction of the city council, may borrow a sufficient amount to pay the judgments, for a period of time not to extend beyond the close of the next fiscal year, which sum and interest thereon shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein.

Source: Laws 1901, c. 18, § 43, p. 243; R.S.1913, § 4976; C.S.1922, § 4145; C.S.1929, § 16-705; Laws 1935, Spec. Sess., c. 10, § 11, p. 78; Laws 1941, c. 130, § 17, p. 501; C.S.Supp.,1941, § 16-705; R.S.1943, § 16-706; Laws 1959, c. 63, § 1, p. 282; Laws 1961, c. 40, § 2, p. 168; Laws 1969, c. 145, § 17, p. 682; Laws 1987, LB 652, § 3; Laws 2016, LB704, § 175.

16-707 Board of equalization; meetings; notice; special assessments; grounds for review.

The mayor and city council shall meet as a board of equalization each year at such times as they shall determine to be necessary, giving notice of any such sitting at least ten days prior thereto by publication in a legal newspaper in or of general circulation in the city. When so assembled they shall have power to equalize all special assessments, not herein otherwise provided for, and to supply any omissions in the assessments and at such meeting the assessments shall be finally levied by them. A majority of all the members elected to the city council shall constitute a quorum for the transaction of any business properly brought before them, but a less number may adjourn from time to time and compel the attendance of absent members. When sitting as a board of equalization on special taxes, the city council may adopt such reasonable rules as to the manner of presenting complaints and applying for remedies and relief as shall seem just. It shall not invalidate or prejudice the proceedings of the board that a majority of the members thereof do not, after organization by a majority, continue present during the advertised hours of sitting so long as the city clerk or some member of the board shall be present to receive complaints and applications and give information. No final action shall be taken by the board except by a majority of all the members elected to the city council comprising the same, and in open session. All the special taxes herein authorized shall be levied and assessed on all lots, parts of lots, lands, and real estate to the extent of the special benefit to such lots, parts of lots, lands, and real estate, by reason of such improvement, such benefits to be determined by the city council sitting as a board of equalization, or as otherwise herein provided, after publication and notice to property owners herein provided. In cases where the city council sitting as a board of equalization shall find such benefits to be equal and uniform, such assessments may be according to the feet frontage and may be prorated and scaled back from the line of such improvement according to such rules as the board of equalization may consider fair and equitable and all such assessments and findings of benefits shall not be subject to review in any equitable or legal action except for fraud, injustice, or mistake.

Source: Laws 1901, c. 18, § 83, p. 292; Laws 1903, c. 19, § 17, p. 246; Laws 1905, c. 23, § 3, p. 246; R.S.1913, § 4977; C.S.1922, § 4146; C.S.1929, § 16-706; R.S.1943, § 16-707; Laws 2010, LB848, § 1; Laws 2016, LB704, § 176.

16-708 Special assessments; invalidity; reassessment.

Whenever any special assessment upon any lot or lots or lands or parcels of land in a city of the first class is found to be invalid and uncollectible, shall be adjudged to be void by a court of competent jurisdiction, or is paid under protest and recovered by suit, because of any defect, irregularity, or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites, and requirements of any statute or ordinance, the mayor and city council may relevy or reassess the special assessment upon the lot or lots or lands or parcels of land in the same manner as other special assessments are levied, without regard to whether the formalities, prerequisites, or conditions prior to equalization have been had or not.

Source: Laws 1925, c. 47, § 1, p. 187; C.S.1929, § 16-707; R.S.1943, § 16-708; Laws 2015, LB361, § 27; Laws 2016, LB704, § 177.

16-709 Special assessments; irregularities; correction.

In cases of any omission, mistake, defect, or irregularity in the preliminary proceedings on any special assessment in a city of the first class, the city council shall have power to correct such mistake, omission, defect, or irregularity, and levy or relevy, as the case may be, a special assessment on any or all property in the district, in accordance with the special benefits received and damages sustained to the property on account of such improvement as found by the city council sitting as a board of equalization. The city council shall deduct from the benefits and allow as a credit, before such relevy, an amount equal to the sum of the installments paid in the original levy.

Source: Laws 1925, c. 47, § 2, p. 188; C.S.1929, § 16-708; R.S.1943, § 16-709; Laws 2016, LB704, § 178.

16-711 Road tax; how expended.

All money arising from the levying of a road tax against or upon property in a city of the first class shall belong to such city and shall be expended upon the streets and grades in such city.

Source: Laws 1901, c. 18, § 87, p. 294; Laws 1907, c. 13, § 1, p. 120; R.S.1913, § 4979; C.S.1922, § 4148; C.S.1929, § 16-710; Laws 1935, c. 31, § 1, p. 135; C.S.Supp.,1941, § 16-710; R.S.1943, § 16-711; Laws 2016, LB704, § 179.

16-712 City funds; depositories; payment; conflict of interest.

The city treasurer shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution shall also be serving as mayor, as a member of the city council, as a member of a board of public works, or as any other officer of such city shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such city funds. Section 77-2366 shall apply to deposits in capital stock financial institutions.

Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1901, c. 18, § 84, p. 293; R.S.1913, § 4980; C.S.1922, § 4149; C.S.1929, § 16-711; Laws 1935, c. 140, § 3, p. 516; C.S.Supp.,1941, § 16-711; R.S.1943, § 16-712; Laws 1957, c. 54, § 2, p. 263; Laws 1959, c. 48, § 1, p. 235; Laws 1969, c. 84, § 3, p. 425; Laws 1989, LB 33, § 18; Laws 1996, LB 1274, § 18; Laws 2001, LB 362, § 19; Laws 2016, LB704, § 180.

16-713 City funds; certificates of deposit; time deposits; security required.

The city treasurer may, upon resolution of the mayor and city council authorizing the action, purchase certificates of deposit from and make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of city funds under the provisions of sections 16-712, 16-714, and 16-715. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as set forth in sections 16-714 and 16-715, except that the penal sum of such bond or the sum of such security shall be reduced in the amount of the time deposit or certificate of deposit insured or guaranteed by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1901, c. 18, § 85, p. 293; R.S.1913, § 4981; C.S.1922, § 4150; C.S.1929, § 16-712; R.S.1943, § 16-713; Laws 1959, c. 48, § 2, p. 235; Laws 1969, c. 84, § 4, p. 425; Laws 1989, LB 33, § 19; Laws 1992, LB 757, § 17; Laws 1996, LB 1274, § 19; Laws 2001, LB 362, § 20; Laws 2009, LB259, § 7; Laws 2016, LB704, § 181.

16-714 City funds; depository bond; conditions.

For the security of the fund so deposited, the city treasurer shall require each depository to give bond for the safekeeping and payment of such deposits and the accretions thereof, which bond shall run to the city and be approved by the mayor. Such bond shall be conditioned that such a depository shall, at the end of every quarter, render to the city treasurer a statement in duplicate, showing the several daily balances, the amount of money of the city held by it during the quarter, the amount of the accretion thereto, and how credited. The bond shall also be conditioned that the depository shall generally do and perform whatever may be required by the provisions of sections 16-712 to 16-715 and faithfully discharge the trust reposed in such depository. Such bond shall be as nearly as practicable in the form provided in section 77-2304. No person in any way connected with any depository as an officer or stockholder shall be accepted as a surety on any bond given by the depository of which he or she is an officer or stockholder. Such bond shall be deposited with the city clerk. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 115; Laws

1937, c. 22, § 1, p. 134; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-714; Laws 1969, c. 84, § 5, p. 426; Laws 1989, LB 33, § 20; Laws 2001, LB 362, § 21; Laws 2016, LB704, § 182.

16-716 City funds; depositories; maximum deposits; liability of treasurer.

The city treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, capital stock financial institution, or qualifying mutual financial institution if the bank, capital stock financial institution, or qualifying mutual financial institution gives a surety bond, nor in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond, more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of such bank, capital stock financial institution, or qualifying mutual financial institution, and the amount so on deposit any time with any such bank, capital stock financial institution, or qualifying mutual financial institution shall not in either case exceed the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the paid-up capital stock and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution.

The city treasurer shall not be liable for any loss sustained by reason of the failure of any such bonded depository whose bond has been duly approved by the mayor as provided in section 16-714 or which has, in lieu of a surety bond, given security as provided in section 16-715.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-716; Laws 1981, LB 491, § 1; Laws 1993, LB 157, § 2; Laws 1996, LB 1274, § 21; Laws 2001, LB 362, § 23; Laws 2002, LB 860, § 1; Laws 2009, LB259, § 9; Laws 2016, LB704, § 183.

16-717 City treasurer; books and accounts.

The city treasurer shall receive all money belonging to the city, and the city clerk and city treasurer shall keep their books and accounts in such a manner as the mayor and city council shall prescribe. The city treasurer shall keep a daily cash book, which shall be footed and balanced daily, and such books and accounts shall always be subject to inspection of the mayor, members of the city council, and such other persons as they may designate.

Source: Laws 1901, c. 18, § 88, p. 295; R.S.1913, § 4983; C.S.1922, § 4152; C.S.1929, § 16-714; R.S.1943, § 16-717; Laws 2016, LB704, § 184.

16-718 City treasurer; warrants; issuance; delivery.

Upon allowance of a claim by the city council, the order for the payment thereof shall specify the particular fund out of which it is payable as specified in the adopted budget statement, and no order or warrant shall be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the treasury to the credit of the proper fund for its payment, and no claim shall be audited or allowed except an

order or warrant for the payment thereof may legally be drawn. All warrants drawn upon the treasury must be signed by the mayor and countersigned by the city clerk and shall state the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrant so drawn. Such warrants may be delivered immediately when so drawn.

Source: Laws 1901, c. 18, § 89, p. 295; Laws 1909, c. 19, § 1, p. 186; R.S.1913, § 4984; C.S.1922, § 4153; C.S.1929, § 16-715; R.S. 1943, § 16-718; Laws 1963, c. 68, § 1, p. 268; Laws 1969, c. 145, § 18, p. 683; Laws 2016, LB704, § 185.

16-719 City treasurer; conversion of funds; penalty.

The city treasurer shall keep all money in his or her hands belonging to the city separate and distinct from his or her own money. He or she is expressly prohibited from using, either directly or indirectly, the city money or warrants in his or her custody and keeping for his or her own use and benefit or that of any other person. Any violation of this section shall subject him or her to immediate removal from office by the city council, and the council may declare such office vacant. The mayor shall appoint a successor, who shall be confirmed by the city council, to hold office for the remainder of the term.

Source: Laws 1901, c. 18, § 90, p. 295; R.S.1913, § 4985; C.S.1922, § 4154; C.S.1929, § 16-716; R.S.1943, § 16-719; Laws 2016, LB704, § 186.

16-720 City treasurer; report; warrant register.

The city treasurer shall report to the mayor and city council annually, and more often if required, at such times as may be prescribed by ordinance, giving a full and detailed account of the receipts and expenditures during the preceding fiscal year, and the state of the treasury. He or she shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, time of payment, the fund from which paid, and the person to whom paid. All such warrants shall be examined by the finance committee at the time of making such annual report.

Source: Laws 1901, c. 18, § 91, p. 296; R.S.1913, § 4986; C.S.1922, § 4155; C.S.1929, § 16-717; R.S.1943, § 16-720; Laws 2016, LB704, § 187.

16-721 City funds; transfer; when authorized.

Each fund created under Chapter 16 shall be strictly devoted to the purpose for which it was created and shall not be diverted therefrom. When the city council by a three-fourths vote of the members thereof shall declare the expenditure of any fund for the purpose for which it was created to be unwise and impracticable or where the purpose thereof has been fully accomplished and the whole fund or an unexpired balance thereof remains, and no indebtedness has been incurred on account of such fund which has not been fully paid, such fund may be transferred to any other fund of the city by the affirmative vote of three-fourths of all the members of the city council.

Source: Laws 1901, c. 18, § 92, p. 296; Laws 1903, c. 19, § 18, p. 247; R.S.1913, § 4987; C.S.1922, § 4156; C.S.1929, § 16-718; R.S. 1943, § 16-721; Laws 2016, LB704, § 188.

16-722 City receipts and expenditures; publication.

The mayor and city council shall cause to be published semiannually a statement of the receipts of the city and an itemized account of the expenditures of the city.

Source: Laws 1901, c. 18, § 93, p. 296; R.S.1913, § 4988; C.S.1922, § 4157; C.S.1929, § 16-719; R.S.1943, § 16-722; Laws 1992, LB 415, § 1; Laws 2016, LB704, § 189.

Cross References

Receipts and expenditures, publication requirements, village or city having population of not more than one hundred thousand, see section 19-1101.

16-723 Taxes; payable in cash; sinking fund; investment; matured bonds or coupons; payment.

All taxes levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the principal of any funded or bonded debt of the city shall be payable in money only. Except as otherwise expressly provided, no money so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which it shall have been raised. Such sinking fund may, under the direction of the mayor and city council, be invested in any of the unmatured bonds issued by the city, provided they can be procured by the city treasurer at such rate or premium as shall be prescribed by ordinance. Any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the city treasurer out of any fund especially created for that purpose without any further order or allowance by the mayor or city council.

Source: Laws 1901, c. 18, § 96, p. 297; R.S.1913, § 4989; C.S.1922, § 4158; C.S.1929, § 16-720; R.S.1943, § 16-723; Laws 2016, LB704, § 190.

16-727 Claims; disallowance; appeal to district court; procedure.

When the claim of any person against the city, except a tort claim as defined in section 13-903, is disallowed in whole or in part by the city council, such person may appeal from the decision of the city council to the district court of the same county by causing a written notice to be served on the city clerk within twenty days after making such decision and executing a bond to such city, with good and sufficient sureties to be approved by the city clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that may be adjudged against the appellant.

Source: Laws 1901, c. 18, § 38, p. 240; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-727; Laws 1969, c. 138, § 22, p. 635; Laws 2016, LB704, § 191.

16-728 Claims; allowance; appeal by taxpayer.

Any taxpayer may appeal from the allowance of any claim against the city, except a tort claim as defined in section 13-903, by serving a written notice upon the city clerk within ten days from such allowance and giving bond as provided in section 16-727. When the city council, by ordinance, provides for the publication of the list of the claims allowed, giving the amounts allowed and

the names of the persons to whom allowed, in a legal newspaper in or of general circulation in such city, such appeal may be taken by a taxpayer by serving a notice thereof within such time after such publication as may be fixed by such ordinance, and giving bond for such appeal within ten days after such allowance.

Source: Laws 1901, c. 18, § 38, p. 241; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-728; Laws 1969, c. 138, § 23, p. 635; Laws 2016, LB704, § 192.

16-729 Claims; allowance or disallowance; appeal; transcript; trial.

The city clerk, upon an appeal being taken under section 16-727 or 16-728 and being paid the proper fees therefor, including fees for filing the same in the district court, shall make out a transcript of the proceedings of the city council, mayor, and other officers as relate to the presentation and allowance or disallowance of such claim and shall file it with the clerk of the district court within thirty days after the decision allowing or disallowing the claim and paying the proper commencement fees. Such appeal shall be entered on the record of the court, tried, and determined and costs awarded thereon in the manner provided in sections 25-1901 to 25-1937. No appeal bond shall be required of the city by any court in the case of an appeal by the city, and judgment shall be stayed pending such appeal.

Source: Laws 1901, c. 18, § 38, p. 241; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 110; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-729; Laws 1991, LB 1, § 1; Laws 2016, LB704, § 193; Laws 2018, LB193, § 3. Operative date July 19, 2018.

ARTICLE 8

OFFSTREET PARKING

Section

- 16-801. Offstreet parking; purpose.
- 16-802. Grant of power.
- 16-803. Acquisition of property and facilities; cost; revenue bonds; interest; issuance; revenue pledged.
- 16-804. Revenue bonds; plans and specifications; engineer.
- 16-805. City council; rules and regulations; rates and charges; adopt.
- 16-806. Ordinance; publication; objections; submission to electors; election; notice.
- 16-807. Lease of facilities; competitive bidding.
- 16-809. Revenue bonds; rights of holders.
- 16-810. Revenue bonds; onstreet parking meters; revenue; use; exception.

16-801 Offstreet parking; purpose.

The Legislature finds and declares that the great increase in the number of motor vehicles, buses, and trucks in Nebraska has created hazards to life and property in cities of the first class in the state. In order to remove or reduce such hazards to life and property and the inconvenience of congested traffic on the streets in such cities in this state, it is hereby deemed necessary and of general benefit to the entire State of Nebraska to provide means for such cities in Nebraska to own offstreet vehicle parking facilities exclusively for the parking of motor vehicles.

Source: Laws 1955, c. 35, § 1, p. 143; Laws 2016, LB704, § 194.

16-802 Grant of power.

Any city of the first class is hereby authorized to own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities for the use of the general public. This does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided in this section. Such city shall have the authority to acquire by grant, contract, or purchase or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct the facilities necessary or convenient in the carrying out of this grant of power. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication in a legal newspaper in or of general circulation in the city once each week for not less than three weeks, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the application or applications have been disapproved by the city council within ninety days from the first date of publication, then such city may proceed in the exercise of the powers granted under this section.

Source: Laws 1955, c. 35, § 2, p. 144; Laws 1996, LB 299, § 13; Laws 2016, LB704, § 195.

16-803 Acquisition of property and facilities; cost; revenue bonds; interest; issuance; revenue pledged.

In order to pay the cost required by any purchase, construction, lease, or condemnation of property and equipping of facilities, or the enlargement of presently owned facilities, or to pay a portion of the cost of facilities purchased or constructed pursuant to the Offstreet Parking District Act, a city of the first class may issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall not be payable from any general tax upon the issuing city, but shall be a lien only upon the revenue and earnings of the parking facilities. Such revenue bonds may be issued at an interest cost to maturity set by the city council and shall mature in not to exceed forty years but may be optional prior to maturity at a premium as provided in the authorizing resolution or ordinance. Any such revenue bonds which may be issued shall not be included in computing the maximum amount of bonds which the issuing city of the first class may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. If any city has installed or installs onstreet parking meters, it may pledge all or any part of the revenue of such parking meters, not previously pledged, as security for the bonds authorized in this section.

Source: Laws 1955, c. 35, § 3, p. 144; Laws 1969, c. 88, § 27, p. 450; Laws 1969, c. 51, § 40, p. 296; Laws 2016, LB704, § 196.

Cross References

Offstreet Parking District Act, see section 19-3301.

16-804 Revenue bonds; plans and specifications; engineer.

Before the issuance of any revenue bonds as provided under section 16-803, the city of the first class shall have an independent and qualified firm of

engineers prepare plans and specifications for such improvements. In the preparation of the plans and specifications, the independent engineer shall collaborate and counsel with any city engineering or traffic departments so as to coordinate the program with the program for the control of traffic within such city.

Source: Laws 1955, c. 35, § 4, p. 145; Laws 2016, LB704, § 197.

16-805 City council; rules and regulations; rates and charges; adopt.

The city council shall make all necessary rules and regulations governing the use, operation, and control of the improvements as provided in sections 16-801 to 16-811. In the exercise of the grant of power as provided in sections 16-801 to 16-811, the city of the first class may make contracts with departments of the city, or others, if such contracts are necessary and needed for the payment of the revenue bonds authorized in section 16-803 and for the successful operation of the parking facilities. The city council shall also establish and maintain equitable rates or charges for such services sufficient in amount to pay for the cost of operation, repair, and upkeep of the facilities to be purchased, acquired, or leased, and the principal of and interest on any revenue bonds issued pursuant to sections 16-801 to 16-811. The city council may also make any other agreements with the purchasers of the bonds for the security of the issuing city and the purchasers of such bonds not in contravention with sections 16-801 to 16-811.

Source: Laws 1955, c. 35, § 5, p. 145; Laws 2016, LB704, § 198.

16-806 Ordinance; publication; objections; submission to electors; election; notice.

The mayor and city council of a city of the first class may adopt by ordinance the proposition to make such purchase or to erect such facility or facilities as set forth in section 16-802, and before the purchase can be made or facility created, the city council shall publish in a legal newspaper in or of general circulation in the city the location of the proposed offstreet motor vehicle parking facility or facilities, the proposed cost, and the total amount of the bonds to be issued. If the electors of such city, equal in number to five percent of the electors of such city voting at the last preceding general municipal election, file a written objection or objections to the proposed issuance of revenue bonds within sixty days after the adoption of such ordinance, the city council must submit the question to the electors of such city at a general municipal election or at a special election called for that purpose and be approved by a majority of the electors voting on such question. If the question is submitted at a special election, the vote for the purchase or acquisition of such real estate or the purchase or erection of such facility or facilities shall equal at least a majority of the votes cast at the last preceding general election. Notice of the time and place of the election shall be given by publication in a legal newspaper in or of general circulation in such city three successive weeks prior thereto.

Source: Laws 1955, c. 35, § 6, p. 146; Laws 1957, c. 27, § 1, p. 181; Laws 2016, LB704, § 199.

16-807 Lease of facilities; competitive bidding.

On the creation of a parking facility as provided under section 16-802 for the use of the general public, the city may lease such facility to one or more operators to provide for the efficient operation of the facility. Such lease shall be let on a competitive basis and no lease shall run for a period in excess of ten years. In granting any lease, the city shall retain such control of the facility as may be necessary to insure that the facility will be properly operated in the public interest and that the prices charged are reasonable. The provisions of sections 16-801 to 16-811 shall not be construed to authorize the city or the lessee of the facility to engage in the sale of any commodity, product, or service, or to engage in any business other than the purposes set forth in section 16-802.

Source: Laws 1955, c. 35, § 7, p. 146; Laws 2016, LB704, § 200.

16-809 Revenue bonds; rights of holders.

The provisions of sections 16-801 to 16-811 and of any ordinance authorizing the issuance of bonds under the provisions of sections 16-801 to 16-811 shall constitute a contract with the holders of such bonds, and any holder of a bond or bonds or any of the coupons of any bond or bonds of such city, issued under the provisions of sections 16-801 to 16-811, may either in law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of all duties required by the provisions of sections 16-801 to 16-811 or by the ordinance authorizing the bonds, including the making and collection of sufficient charges and fees for service and the use thereof, and the application of income and revenue thereof.

Source: Laws 1955, c. 35, § 9, p. 146; Laws 2016, LB704, § 201.

16-810 Revenue bonds; onstreet parking meters; revenue; use; exception.

Any city of the first class is authorized to use any or all of the revenue from onstreet parking meters for the purpose set forth in section 16-802 if such revenue has not been pledged for the payment of revenue bonds authorized in section 16-803.

Source: Laws 1955, c. 35, § 10, p. 147; Laws 2016, LB704, § 202.

ARTICLE 9

SUBURBAN DEVELOPMENT

Section

- 16-901. Zoning regulations; building ordinances; public utility codes; extension; notice to county board.
- 16-902. Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.
- 16-905. Designation of jurisdiction; how described.

16-901 Zoning regulations; building ordinances; public utility codes; extension; notice to county board.

(1) Except as provided in section 13-327 and subsection (2) of this section, the extraterritorial zoning jurisdiction of a city of the first class shall consist of the unincorporated area two miles beyond and adjacent to its corporate boundaries.

(2) For purposes of sections 70-1001 to 70-1020, the extraterritorial zoning jurisdiction of a city of the first class shall consist of the unincorporated area one mile beyond and adjacent to its corporate boundaries.

(3) Any city of the first class may apply by ordinance any existing or future zoning regulations, property use regulations, building ordinances, electrical ordinances, plumbing ordinances, and ordinances authorized by section 16-240 within its extraterritorial zoning jurisdiction with the same force and effect as if such area were within the corporate limits of the city, except that no such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. The fact that the extraterritorial zoning jurisdiction is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the powers of the city to apply such ordinances.

(4)(a) A city of the first class shall provide written notice to the county board of the county in which the city's extraterritorial zoning jurisdiction is located when proposing to adopt or amend a zoning ordinance which affects the city's extraterritorial zoning jurisdiction within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city within thirty days after receiving such notice. The city may make its final decision (i) upon the expiration of the thirty days following the notice or (ii) when the county board submits comments or recommendations, if any, to the city prior to the expiration of the thirty days following the notice.

(b) Subdivision (4)(a) of this section does not apply to a city of the first class (i) located in a county with a population in excess of one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or (ii) if the city and the county have a joint planning commission or joint planning department.

Source: Laws 1957, c. 28, § 1, p. 183; Laws 1967, c. 70, § 1, p. 232; Laws 1967, c. 75, § 1, p. 242; Laws 1988, LB 934, § 5; Laws 2002, LB 729, § 3; Laws 2016, LB295, § 1; Laws 2016, LB704, § 203; Laws 2017, LB113, § 11; Laws 2017, LB132, § 3.

16-902 Designation of jurisdiction; subdivision; platting; consent required; review by county planning commission; when required.

(1) Except as provided in subsection (4) of this section, a city of the first class may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904 or section 19-2402.

(2) No owner of any real property located within the area designated by a city pursuant to subsection (1) or (4) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council of such city or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the city shall not be

construed as affecting the necessity of obtaining the approval of the city council of such city or its designated agent.

(3) In counties that (a) have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and (b) are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a city of the first class in that county, when such proposed plat lies partially or totally within the portion of that city's extraterritorial zoning jurisdiction where the powers and duties granted by sections 16-902 to 16-904 are being exercised by that city in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the city after the commission receives all available material for a proposed subdivision plat.

(4) If a city of the first class receives approval for the cession and transfer of additional extraterritorial zoning jurisdiction under section 13-327, such city may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904 or section 19-2402 and shall include territory ceded under section 13-327 within such designation.

Source: Laws 1957, c. 28, § 2(1), p. 183; Laws 1967, c. 70, § 2, p. 232; Laws 1967, c. 75, § 2, p. 243; Laws 1978, LB 186, § 1; Laws 1983, LB 71, § 2; Laws 1993, LB 208, § 1; Laws 2001, LB 222, § 1; Laws 2002, LB 729, § 4; Laws 2003, LB 187, § 4; Laws 2016, LB704, § 204; Laws 2016, LB864, § 2; Laws 2017, LB132, § 4.

16-905 Designation of jurisdiction; how described.

An ordinance of any city of the first class designating the extraterritorial zoning jurisdiction of the city under section 16-901 or 16-902 shall describe such territory by metes and bounds or by reference to an official map.

Source: Laws 1993, LB 208, § 2; Laws 2016, LB704, § 205.

ARTICLE 10

RETIREMENT SYSTEMS

(a) POLICE OFFICERS RETIREMENT ACT

Section

- 16-1002. Terms, defined.
- 16-1007. Retiring officer; annuity options; how determined; lump-sum payment option.
- 16-1011. Police officer; disability in the line of duty; benefit; requirements.
- 16-1014. Retirement committee; established; city council; responsibilities.
- 16-1017. Retirement committee; duties.
- 16-1019. Exemption from legal process; administration; requirements; retirement committee; powers and duties; review of adjustment; tax levy authorized.

(b) FIREFIGHTERS RETIREMENT

- 16-1021. Terms, defined.
- 16-1027. Retiring firefighter; annuity options; how determined; lump-sum payment.

Section

- 16-1034. Retirement committee; established; city council; responsibilities; powers and duties; allocation.
- 16-1035. Retirement committee; members; terms; vacancy; expenses.
- 16-1037. Retirement committee; officers; duties.
- 16-1038. Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(a) POLICE OFFICERS RETIREMENT ACT

16-1002 Terms, defined.

For purposes of the Police Officers Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means equality in value of the aggregate amount of benefit expected to be received under different forms of benefit or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalent of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by the police officer’s retirement value. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(2) Annuity contract means the contract or contracts issued by one or more life insurance companies and purchased by the retirement system in order to provide any of the benefits described in the act. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis;

(3) Beneficiary means the person or persons designated by a police officer, pursuant to a written instrument filed with the retirement committee before the police officer’s death, to receive death benefits which may be payable under the retirement system;

(4) Funding agent means any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the city or retirement committee to hold or invest the funds of the retirement system;

(5) Regular interest means the rate of interest earned each calendar year equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings means the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year;

(6) Regular pay means the average salary of the police officer for the period of five consecutive years preceding elective retirement, death, or date of disability which produces the highest average;

(7) Retirement committee means the retirement committee created pursuant to section 16-1014;

(8) Retirement system means a retirement system established pursuant to the act;

(9) Retirement value means the accumulated value of the police officer’s employee account and employer account. The retirement value consists of the

sum of the contributions made or transferred to such accounts by the police officer and by the city on the police officer's behalf and the regular interest credited to the accounts as of the date of computation, reduced by any realized losses which were not taken into account in determining regular interest in any year, and further adjusted each year to reflect the pro rata share for the accounts of the appreciation or depreciation of the fair market value of the assets of the retirement system as determined by the retirement committee. The retirement value shall be reduced by the amount of all distributions made to or on the behalf of the police officer from the retirement system. Such valuation shall be computed annually as of December 31. If separate investment accounts are established pursuant to subsection (3) of section 16-1004, a police officer's retirement value with respect to such accounts shall be equal to the value of his or her separate investment accounts as determined under such subsection;

(10) Salary means all amounts paid to a participating police officer by the employing city for personal services as reported on the participant's federal income tax withholding statement, including the police officer's contributions picked up by the city as provided in subsection (2) of section 16-1005 and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code;

(11) Sex-neutral basis means the benefit calculation provided to the city of the first class by a licensed domestic or foreign insurance or annuity company with a product available for purchase in Nebraska that utilizes a blended, non-gender-specific rate for actuarial assumptions, mortality assumptions, and annuity conversion rates for a particular participant, except that if a blended, non-gender-specific rate is not available for purchase in Nebraska, the benefit calculation shall be performed using the arithmetic mean of the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates and the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable, for a particular participant, and the arithmetic mean shall be determined by adding the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates to the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates applicable to a particular participant and dividing the sum by two; and

(12) Straight life annuity means an ordinary annuity payable for the life of the primary annuitant only and terminating at his or her death without refund or death benefit of any kind.

Source: Laws 1983, LB 237, § 2; Laws 1992, LB 672, § 7; Laws 1995, LB 574, § 17; Laws 2012, LB1082, § 2; Laws 2014, LB759, § 8; Laws 2016, LB790, § 1.

16-1007 Retiring officer; annuity options; how determined; lump-sum payment option.

(1) At any time before the retirement date, the retiring police officer may elect to receive at his or her retirement date a pension benefit either in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee and provided under a purchased annuity contract. The optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring

police officer and, after the death of the retiree, monthly payments, as elected by the retiring police officer, of either one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring police officer during his or her life, to the beneficiary selected by the retiring police officer at the time of the original application for an annuity. The optional benefit forms for the retirement system shall include a single lump-sum payment of the police officer's retirement value. The retiring police officer may further elect to defer the date of the first annuity payment or lump-sum payment to the first day of any specified month prior to age seventy. If the retiring police officer elects to receive his or her pension benefit in the form of an annuity, the amount of annuity benefit shall be the amount paid by the annuity contract purchased or otherwise provided by his or her retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the police officer and, upon such distribution, all obligations of the retirement system to pay retirement, death, or disability benefits to the police officer and his or her beneficiaries shall terminate, without exception.

(2)(a) For all officers employed on January 1, 1984, and continuously employed by the city from such date through the date of their retirement, the amount of the pension benefit, when determined on the straight life annuity basis, shall not be less than the following amounts:

(i) If retirement occurs following age sixty and with twenty-five years of service with the city, fifty percent of regular pay; or

(ii) If retirement occurs following age fifty-five but before age sixty and with twenty-five years of service with the city, forty percent of regular pay.

(b) A police officer entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment. If the minimum pension benefit is paid in a form other than a straight life annuity, such benefit shall be the actuarial equivalent of the straight life annuity that would otherwise be paid to the officer pursuant to this subsection.

(c) If the police officer chooses the single lump-sum payment option, the officer can request that the actuarial equivalent be equal to the average of the cost of three annuity contracts based on products available for purchase in Nebraska. Of the three annuity contracts used for comparison, one shall be chosen by the police officer, one shall be chosen by the retirement committee, and one shall be chosen by the city. The annuity contracts used for comparison shall all use the same type of sex-neutral basis benefit calculation.

(3) If the retirement value of an officer entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall transfer such funds as may be necessary to the employer account of the police officer so that the retirement value of such officer is sufficient to purchase or provide for the required pension benefit.

(4) Any retiring police officer whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value and shall not be entitled to elect to receive annuity benefits.

Source: Laws 1983, LB 237, § 7; Laws 1992, LB 672, § 11; Laws 2012, LB1082, § 7; Laws 2014, LB759, § 9.

16-1011 Police officer; disability in the line of duty; benefit; requirements.

(1) If any police officer becomes disabled, such police officer shall be placed upon the roll of pensioned police officers at the regular retirement pension of fifty percent of regular pay for the period of such disability. For purposes of this section, disability shall mean the complete inability of the police officer, for reasons of accident or other cause while in the line of duty, to perform the duties of a police officer.

(2) No disability benefit payment shall be made except upon adequate proof furnished to the city, such proof to consist of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who certifies to the city that the police officer is unable to perform the duties of a police officer. The city, during the first three years of the payment of such benefits, shall have the right, at reasonable times, to require the disabled police officer to undergo a medical examination at the city's expense to determine the continuance of the disability claimed. After such three-year period, the city may request the district court to order the police officer to submit proof of the continuance of the disability claimed if the city has reasonable grounds to believe the police officer is fraudulently receiving disability payments. The city shall have the right to demand a physical examination of the police officer by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state, and who is chosen by the city. The expense of such examination shall be borne by the city.

(3) In case of temporary disability of a police officer received while in the line of duty, he or she shall receive his or her salary during the continuance of such disability for a period not to exceed twelve months, except that if it is ascertained by the city council or other proper municipal authorities within twelve months that such temporary disability has become a disability as defined in this section, then the salary shall cease and he or she shall be entitled to the benefits for pensions in case of disability as provided in this section.

(4) All payments of pension or salary provided by this section shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. In case of a permanent disability of a police officer, such payments shall not commence until all credit for unused annual or sick leave and other similar credits have been fully utilized by the disabled police officer if there will be no impairment to his or her salary during the period of disability. Total payments to a disabled police officer, in excess of amounts paid as workers' compensation benefits, shall not be less than the retirement value at the date of disability. If the actuarial equivalent of the disability pension payable under this section exceeds the police officer's retirement value at the time of the first payment, the city shall contribute such additional amounts as may be necessary, from time to time, to provide for the required disability pension.

(5) If a police officer who was pensioned under this section is later determined to be no longer disabled, the pension provided for under this section shall terminate and the police officer's vested retirement value, as reduced by any disability payments made from the retirement system, shall thereafter be held and administered in the same manner as for any nondisabled police officer or former police officer.

(6) If a police officer who has pensioned under this section is later determined to be no longer disabled during the first three years when disability

benefit payments are being paid the police officer may return to duty with the police force under the following conditions:

(a) If a vacancy exists on the police force for which the police officer is qualified and the police officer wishes to return to the police force, the city shall hire the police officer to fill the vacancy at a pay grade of not less than his or her previous pay grade; or

(b) If no vacancy exists on the police force and the police officer wishes to return to the police force, the city may create a vacancy under the city's reduction in force policy adopted under the Civil Service Act and rehire the officer at a pay grade of not less than his or her previous pay grade.

The provisions of this subsection shall not apply to a police officer whose disability benefit payments are terminated because of fraud on the part of the police officer.

Source: Laws 1983, LB 237, § 11; Laws 1986, LB 811, § 4; Laws 1992, LB 672, § 15; Laws 2013, LB263, § 1.

Cross References

Civil Service Act, see section 19-1825.

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

16-1014 Retirement committee; established; city council; responsibilities.

A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to the Police Officers Retirement Act. The city council shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. Whenever duties or powers are vested in the city or the retirement committee under the act or whenever the act fails to specifically allocate the duties or powers of administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee. The city and the retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system.

Source: Laws 1983, LB 237, § 14; Laws 1992, LB 672, § 17; Laws 2012, LB1082, § 12; Laws 2016, LB704, § 206.

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 retirement system's operations describing both (i) the amount of contributions to the retirement system from both employee and employer sources and (ii) an identification of the total assets of the retirement system.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The chairperson of the retirement committee shall file with the Public Employees Retirement Board a 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 the Police Officers Retirement Act 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; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the retirement committee shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city. All costs of the audit shall be paid by the city. The report shall consist of a full actuarial analysis of each such retirement plan administered by a retirement system established pursuant to the 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson of the retirement committee or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the

Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. 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 which offers investment advice or provides investment management services to the retirement plan.

(b) 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. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the retirement committee. All costs of the audit shall be paid by the retirement committee.

Source: Laws 1983, LB 237, § 17; Laws 1998, LB 1191, § 18; Laws 1999, LB 795, § 7; Laws 2011, LB474, § 7; Laws 2012, LB1082, § 14; Laws 2014, LB759, § 10; Laws 2017, LB415, § 7.

16-1019 Exemption from legal process; administration; requirements; retirement committee; powers and duties; review of adjustment; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed and section 401(a)(9)(G) relating to incidental death benefit requirements, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, section 401(a)(31) relating to direct rollover distribu-

tions from eligible retirement plans, and section 401(a)(37) relating to the death benefit of a police officer who dies while performing qualified military service. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under the Police Officers Retirement Act, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A police officer whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under the act, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 237, § 19; Laws 1992, LB 672, § 20; Laws 1995, LB 574, § 20; Laws 1996, LB 1114, § 29; Laws 2012, LB916, § 2; Laws 2012, LB1082, § 15; Laws 2015, LB40, § 2.

(b) FIREFIGHTERS RETIREMENT

16-1021 Terms, defined.

For the purposes of sections 16-1020 to 16-1042, unless the context otherwise requires:

(1) Actuarial equivalent means equality in value of the aggregate amount of benefit expected to be received under different forms or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalency of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by such contract. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(2) Annuity contract means the contract or contracts issued by one or more life insurance companies or designated trusts and purchased by the retirement system in order to provide any of the benefits described in such sections. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis;

(3) Beneficiary means the person or persons designated by a firefighter, pursuant to a written instrument filed with the retirement committee before the firefighter's death, to receive death benefits which may be payable under the retirement system;

(4) Funding agent means any bank, trust company, life insurance company, thrift institution, credit union, or investment management firm selected by the retirement committee, subject to the approval of the city, to hold or invest the funds of the retirement system;

(5) Regular interest means the rate of interest earned each calendar year commencing January 1, 1984, equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings means the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year. The retirement committee shall annually report the amount of regular interest earned for such year;

(6) Regular pay means the salary of a firefighter at the date such firefighter elects to retire or terminate employment with the city;

(7) Retirement committee means the retirement committee created pursuant to section 16-1034;

(8) Retirement system means a retirement system established pursuant to sections 16-1020 to 16-1042;

(9) Retirement value means the accumulated value of the firefighter's employee account and employer account. The retirement value at any time shall consist of the sum of the contributions made or transferred to such accounts by the firefighter and by the city on the firefighter's behalf and the regular interest credited to the accounts through such date, reduced by any realized losses which were not taken into account in determining regular interest in any year, and as further adjusted each year to reflect the accounts' pro rata share of the appreciation or depreciation of the assets of the retirement system as determined by the retirement committee at their fair market values, including any account under subsection (2) of section 16-1036. Such valuation shall be undertaken at least annually as of December 31 of each year and at such other times as may be directed by the retirement committee. The value of each account shall be reduced each year by the appropriate share of the investment costs as provided in section 16-1036.01. The retirement value shall be further reduced by the amount of all distributions made to or on the behalf of the firefighter from the retirement system;

(10) Salary means the base rate of pay, excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the firefighters' contributions picked up by the city as provided in subsection (2) of section 16-1024 and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code;

(11) Sex-neutral basis means the benefit calculation provided to the city of the first class by a licensed domestic or foreign insurance or annuity company with a product available for purchase in Nebraska that utilizes a blended, non-gender-specific rate for actuarial assumptions, mortality assumptions, and annuity conversion rates for a particular participant, except that if a blended, non-gender-specific rate is not available for purchase in Nebraska, the benefit calculation shall be performed using the arithmetic mean of the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates and the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable, for a particular participant, and the arithmetic

mean shall be determined by adding the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates to the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates applicable to a particular participant and dividing the sum by two; and

(12) Straight life annuity means an ordinary annuity payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind.

Source: Laws 1983, LB 531, § 2; Laws 1993, LB 724, § 1; Laws 1995, LB 574, § 21; Laws 2014, LB759, § 11.

16-1027 Retiring firefighter; annuity options; how determined; lump-sum payment.

(1) At any time before the retirement date, the retiring firefighter may elect to receive his or her pension benefit at retirement either in the form of a straight life annuity or any optional form of annuity benefit established by the retirement committee and provided under a purchased annuity contract. Such optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring firefighter and, after the death of the retiree, monthly payments, as elected by the retiring firefighter, of one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring firefighter during his or her life, to the beneficiary selected by the retiring firefighter at the time of the original application for an annuity. For any firefighter whose retirement date is on or after January 1, 1997, the optional benefit forms for the retirement system shall include a single lump-sum payment of the firefighter's retirement value. For firefighters whose retirement date is prior to January 1, 1997, a single lump-sum payment shall be available only if the city has adopted such distribution option in the funding medium established for the retirement system. The retiring firefighter may further elect to defer the date of the first payment or lump-sum distribution to the first day of any specified month prior to age seventy. In the event the retiring firefighter elects to receive his or her pension benefit in the form of an annuity, the amount of such annuity benefit shall be the amount provided by the annuity contract purchased or otherwise provided by the firefighter's retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the retiring firefighter. Upon the payment of a lump sum or the distribution of a paid-up annuity contract, all obligations of the retirement system to pay retirement benefits to the firefighter and his or her beneficiaries shall terminate, without exception.

(2) For all firefighters employed on January 1, 1984, the amount of the pension benefit at the retirement date shall not be less than the following amounts:

(a) If retirement from the city occurs following age fifty-five with twenty-one years of service with the city, fifty percent of regular pay;

(b) If retirement from the city occurs following age fifty but before age fifty-five with at least twenty-one years of service with the city, such firefighter shall receive the actuarial equivalent of the benefit which would otherwise be provided at age fifty-five;

(c) If retirement from the city occurs on or after age fifty-five with less than twenty-one years of service with the city, such firefighter shall receive a pension of at least fifty percent of the salary he or she was receiving at the time of retirement multiplied by the ratio of the years of service to twenty-one;

(d) For terminations of employment from the city on or after September 9, 1993, if such termination of employment as a firefighter occurs before age fifty-five but after completion of twenty-one years of service with the city, such firefighter shall receive upon the attainment of age fifty-five a pension benefit of fifty percent of regular pay;

(e) Unless an optional annuity benefit is selected by the retired firefighter, at the death of any such retired firefighter the same rate of pension as is provided for in this section shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse remains unmarried and, in case there is no surviving spouse, then the minor children, if any, of such deceased firefighter shall equally share such pension benefit during their minority, except that as soon as a child of such deceased firefighter ceases to be a minor, such pension as to such child shall cease; or

(f) In the event a retired firefighter or his or her surviving beneficiaries die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the firefighter's employee account, at the time of the first benefit payment the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's estate.

A firefighter entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment, if the firefighter retires on or after January 1, 1997, or if the city has adopted a lump-sum distribution option for firefighters retiring before January 1, 1997, in the funding medium for the retirement system. If the minimum pension benefit is paid in the form of an optional annuity benefit or a single lump-sum payment, such benefit or payment shall be the actuarial equivalent of the annuity that would otherwise be paid to the firefighter pursuant to this subsection.

If the firefighter chooses the single lump-sum payment option, the firefighter may request that the actuarial equivalent be equal to the average of the cost of two annuity contracts based on products available for purchase in Nebraska, if the difference between the cost of the two annuity contracts does not exceed five percent. Of the two annuity contracts used for comparison, one shall be chosen by the firefighter and one shall be chosen by the city. If the difference between the two annuity contracts exceeds five percent, the retirement committee shall review the costs of the two annuity contracts and make a recommendation to the city council as to the amount of the lump-sum payment to be made to the firefighter. The city council shall, after a hearing, determine the amount of the single lump-sum payment due the firefighter. The annuity contracts used for comparison shall all use the same type of sex-neutral basis benefit calculation.

(3) If the retirement value of a firefighter entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall

utilize such funds as may be necessary from the unallocated employer account of the retirement system to purchase or provide for the required pension benefit.

(4) Any retiring firefighter whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value in lieu of annuity and shall not be entitled to elect to receive annuity benefits.

Source: Laws 1983, LB 531, § 8; Laws 1992, LB 672, § 22; Laws 1993, LB 724, § 5; Laws 1994, LB 1068, § 1; Laws 2014, LB759, § 12.

16-1034 Retirement committee; established; city council; responsibilities; powers and duties; allocation.

A retirement committee shall be established to supervise the general operation of the retirement system. The city council shall be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. All costs incurred with regard to the administration of the retirement system shall be paid by the city from the unallocated employer account as provided in section 16-1036.01.

The city and retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system. Whenever sections 16-1020 to 16-1042 fail to address the allocation of duties or powers in the administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.

Source: Laws 1983, LB 531, § 15; Laws 1992, LB 672, § 25; Laws 1993, LB 724, § 11; Laws 2016, LB704, § 207.

16-1035 Retirement committee; members; terms; vacancy; expenses.

Each retirement committee established pursuant to section 16-1034 shall consist of six members of which four members shall be selected by the active paid firefighters excluding firefighters identified in section 16-1039. Two members shall be designated by the city council. The members who are not participants in such retirement system shall have a general knowledge of retirement plans. Members of the city council, active members of the fire department, and members of the general public may serve on the retirement committee. The committee members shall be appointed to four-year terms. Vacancies shall be filled for the remainder of the term by a person with the same representation as his or her predecessor. Members of the retirement committee shall, subject to approval by the city council, be reimbursed for their actual and necessary expenses incurred in carrying out their duties.

Source: Laws 1983, LB 531, § 16; Laws 1992, LB 672, § 26; Laws 2016, LB704, § 208.

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) Beginning December 31, 1998, through December 31, 2017:

(a) 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; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the retirement committee shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or

cause to be audited, the city. All costs of the audit shall be paid by the city. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the chairperson of the retirement committee or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. 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 which offers investment advice or provides investment management services to the retirement plan.

(b) 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. If the retirement committee does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the retirement committee. All costs of the audit shall be paid by the retirement committee.

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; Laws 2014, LB759, § 13; Laws 2017, LB415, § 8.

Cross References

Open Meetings Act, see section 84-1407.

16-1038 Retirement benefits; exemption from legal process; exception; tax-qualification requirements; benefit error; correction; appeal; tax levy authorized.

(1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of

section 414(p) of the Internal Revenue Code. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed and section 401(a)(9)(G) relating to incidental death benefit requirements, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, section 401(a)(31) relating to direct rollover distribution from eligible retirement plans, and section 401(a)(37) relating to the death benefit of a firefighter who dies while performing qualified military service. Any requirements for compliance with section 401(a) of the Internal Revenue Code may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under sections 16-1020 to 16-1042, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A firefighter whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under sections 16-1020 to 16-1042, the mayor and council may make a levy which is within the levy restrictions of section 77-3442.

Source: Laws 1983, LB 531, § 19; Laws 1993, LB 724, § 13; Laws 1995, LB 574, § 24; Laws 1996, LB 1114, § 30; Laws 2012, LB916, § 3; Laws 2012, LB1082, § 16; Laws 2015, LB40, § 3.

CHAPTER 17

CITIES OF THE SECOND CLASS AND VILLAGES

Article.

1. Laws Applicable Only to Cities of the Second Class. 17-101 to 17-174.
2. Laws Applicable Only to Villages. 17-201 to 17-231.
3. Changes in Population or Class.
 - (a) Cities of the First Class. 17-301 to 17-304.
 - (b) Cities of the Second Class. 17-306 to 17-310.
 - (c) Villages. 17-311 to 17-313.
4. Change of Boundary; Additions.
 - (a) Consolidation. 17-401 to 17-404.
 - (b) Annexation of Territory. 17-405 to 17-412.
 - (c) Detachment of Territory Within City Limits. 17-414.
 - (d) Platting. 17-415 to 17-426. Transferred.
5. General Grant of Power. 17-501 to 17-575.
6. Elections, Officers, Ordinances.
 - (a) Elections. 17-601.01 to 17-603.
 - (b) Officers. 17-604 to 17-612.
 - (c) Ordinances. 17-613 to 17-616.
7. Fiscal Management. 17-701 to 17-720.
8. Board of Public Works in Cities of the Second Class. 17-801 to 17-810.
9. Particular Municipal Enterprises.
 - (a) Public Utilities Service. 17-903 to 17-912.
 - (b) Sewerage System. 17-913 to 17-925.04.
 - (c) Cemeteries. 17-926 to 17-947.
 - (d) Recreation Centers. 17-948 to 17-952.
 - (e) Public Buildings. 17-953 to 17-955.
 - (f) Refrigeration. 17-957 to 17-960.
 - (g) Medical and Housing Facilities. 17-962 to 17-966.
 - (h) Libraries. 17-967 to 17-969.
 - (i) Water Service District. 17-970 to 17-976.
10. Suburban Development. 17-1001 to 17-1003.

ARTICLE 1

LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section

- | | |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17-101. | City of the second class, defined; population; exception. |
| 17-102. | Wards; number; how determined. |
| 17-104. | City council members; election; term; qualifications. |
| 17-105. | City council; meetings; quorum. |
| 17-106. | City council; special meetings. |
| 17-107. | Mayor; qualifications; election; officers; appointment; removal; terms of office; police officers; appointment; removal, demotion, or suspension; procedure. |
| 17-108. | Officers and employees; salaries. |
| 17-108.02. | Officers and employees; merger of offices or employment; salaries. |
| 17-110. | Mayor; general duties and powers. |
| 17-111. | Mayor; ordinances; veto power; passage over veto. |
| 17-112. | Mayor; recommendations to city council. |
| 17-113. | Mayor; reports of officers; power to require. |
| 17-114. | Mayor; territorial jurisdiction. |
| 17-117. | Mayor; remission of fines; pardons; powers. |
| 17-118. | Police; arrest; power. |

CITIES OF THE SECOND CLASS AND VILLAGES

Section	
17-119.	City overseer of streets; duties.
17-120.	Public morals; powers; restrictions.
17-121.	Health and sanitation; rules and regulations; board of health; members; powers.
17-122.	Hospital; establishment and control.
17-123.	Public health; regulations; water; power to supply.
17-123.01.	Transferred to section 17-573.
17-124.	Police; power to establish.
17-126.	Public market; establishment; regulation.
17-127.	Public buildings; power to erect.
17-128.	Repealed. Laws 2017, LB133, § 331.
17-129.	Disorderly conduct; power to prevent.
17-130.	Fire escapes; exits; regulation.
17-131.	Safety regulations.
17-132.	Places of amusement; safety regulations; revocation of license.
17-133.	Repealed. Laws 2017, LB133, § 331.
17-134.	Peddlers; pawnbrokers; entertainers; licensing and regulation.
17-135.	Repealed. Laws 2017, LB133, § 331.
17-136.	Fire hazards; dangerous buildings; elimination.
17-137.	Explosives; storage; fireworks; regulation.
17-138.	Animals; cruelty, prevention of.
17-139.	Traffic; sales; regulation.
17-140.	Signs and handbills; regulation.
17-141.	Sidewalks and substructures; regulation.
17-142.	Streets; moving of buildings; other obstructions; regulation.
17-143.	Railroads; location, grade, and crossing; regulation.
17-144.	Repealed. Laws 2017, LB133, § 331.
17-145.	Sewers and drains; regulation.
17-146.	Refunding bonds; power to issue.
17-147.	Fire department; organization and equipment.
17-148.	City council; president; acting president; powers.
17-149.	Transferred to section 17-574.
17-149.01.	Transferred to section 17-575.
17-150.	Sewerage system; establishment; estimates; duties of engineer; contracts; advertisement for bids.
17-151.	Sewerage system; establishment; borrowing money; conditions precedent.
17-153.	Sewerage system; bonds; sinking funds; investment.
17-154.	Sewers; right-of-way; condemnation; procedure.
17-155.	Board of equalization; counties under township organization; members; meetings.
17-157.	Joint city and school district facility; expense; bonds; election; approval by electors.
17-158.	Joint city and school district facility; indebtedness; bonds; principal and interest; in addition to other limitations.
17-159.	Joint city and school district facility; city council and board of education; building commission; powers; duties.
17-160.	Joint city and school district facility; building commission; plans and specifications; personnel; compensation; contracts.
17-161.	Joint city and school district facility; annual budget of city and school district.
17-162.	Joint city and school district facility; building commission; accept gifts.
17-163.	Offstreet parking; declaration of purpose.
17-164.	Offstreet parking; facilities; acquisition; procedure.
17-165.	Offstreet parking; revenue bonds; issuance; terms.
17-166.	Offstreet parking; plans and specifications; coordination with traffic control program.
17-167.	Offstreet parking; city council; rules and regulations; contracts; rates.
17-168.	Offstreet parking; acquisition of facilities; submission at election; notice.
17-169.	Offstreet parking; facilities; lease; controls retained; business restricted.
17-170.	Offstreet parking; private parking lot; not subject to eminent domain.
17-171.	Offstreet parking; rights of bondholders.

Section

- 17-172. Offstreet parking; revenue; use.
 17-174. City of second class; public passenger transportation system; acquire; accept funds; administration; powers.

17-101 City of the second class, defined; population; exception.

Each municipality containing more than eight hundred and not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be a city of the second class and be governed by sections 17-101 to 17-153 unless it adopts or retains a village form of government as provided in sections 17-306 to 17-312. The population of a city of the second class shall consist of the people residing within the territorial boundaries of such city and the residents of any territory duly and properly annexed to such city.

Source: Laws 1879, § 1, p. 193; Laws 1885, c. 16, § 1, p. 156; R.S.1913, § 4993; C.S.1922, § 4162; C.S.1929, § 17-101; R.S.1943, § 17-101; Laws 1971, LB 62, § 1; Laws 1993, LB 726, § 6; Laws 2014, LB702, § 1; Laws 2017, LB113, § 12; Laws 2017, LB133, § 1.

17-102 Wards; number; how determined.

Unless the city elects council members at large as provided in section 32-554, each city of the second class shall be divided into not less than two nor more than six wards, as provided by ordinance of the city council. Each ward shall contain, as nearly as practicable, an equal portion of the population.

Source: Laws 1879, § 2, p. 193; R.S.1913, § 4994; C.S.1922, § 4163; C.S.1929, § 17-102; Laws 1935, c. 32, § 1, p. 137; C.S.Supp.,1941, § 17-102; R.S.1943, § 17-102; Laws 1969, c. 257, § 5, p. 934; Laws 2016, LB702, § 1.

17-104 City council members; election; term; qualifications.

Unless the city elects city council members at large as provided in section 32-554, each ward of each city of the second class shall have at least two city council members elected in the manner provided in the Election Act. The term of office shall begin on the first regular meeting of the city council in December following the statewide general election. No person shall be eligible to the office of city council member who is not at the time of the election an actual resident of the ward for which he or she is elected and a registered voter.

Source: Laws 1879, § 4, p. 194; R.S.1913, § 4996; C.S.1922, § 4165; C.S.1929, § 17-104; R.S.1943, § 17-104; Laws 1969, c. 257, § 6, p. 934; Laws 1973, LB 559, § 2; Laws 1979, LB 253, § 1; Laws 1981, LB 446, § 2; Laws 1994, LB 76, § 490; Laws 2016, LB702, § 2; Laws 2017, LB133, § 2.

Cross References

City council, election, see section 32-533.

Election Act, see section 32-101.

Vacancies, see sections 32-568 and 32-569.

17-105 City council; meetings; quorum.

Regular meetings of the city council of a city of the second class shall be held at such times as the city council may provide by ordinance. A majority of all the members elected to the city council shall constitute a quorum for the transaction of any business, but a fewer number of members may adjourn from time to time and compel the attendance of absent members. Unless a greater vote is required by law, an affirmative vote of at least one-half of the elected members shall be required for the transaction of any business.

Source: Laws 1879, § 5, p. 194; R.S.1913, § 4997; C.S.1922, § 4166; C.S.1929, § 17-105; R.S.1943, § 17-105; Laws 1995, LB 93, § 1; Laws 2017, LB133, § 3.

17-106 City council; special meetings.

The mayor or any three city council members of a city of the second class shall have power to call special meetings of the city council, the object of which shall be submitted to the city council in writing; and the call and object, as well as the disposition thereof, shall be entered upon the journal by the city clerk.

Source: Laws 1879, § 13, p. 196; R.S.1913, § 4998; C.S.1922, § 4167; C.S.1929, § 17-106; R.S.1943, § 17-106; Laws 2017, LB133, § 4.

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 city council assumes the office of mayor for the unexpired term, there shall be a vacancy on the city council which vacancy shall be filled as provided in section 32-568.

(2) The mayor, with the consent of the city 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 city 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 city council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and city 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 city 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; Laws 2017, LB133, § 5.

Cross References

Election Act, see section 32-101.

17-108 Officers and employees; salaries.

The officers and employees of a city of the second class shall receive such compensation as the mayor and city council shall fix by ordinance.

Source: Laws 1879, § 7, p. 195; Laws 1881, c. 23, § 2, p. 168; Laws 1911, c. 16, § 1, p. 133; R.S.1913, § 5000; Laws 1919, c. 46, § 1, p. 130; C.S.1922, § 4169; C.S.1929, § 17-108; Laws 1935, c. 36, § 3, p. 149; C.S.Supp.,1941, § 17-108; Laws 1943, c. 30, § 2, p. 140;

R.S.1943, § 17-108; Laws 1945, c. 25, § 1, p. 134; Laws 1947, c. 31, § 1(1), p. 140; Laws 1949, c. 21, § 1, p. 92; Laws 1953, c. 33, § 1, p. 123; Laws 1969, c. 89, § 1, p. 452; Laws 2017, LB133, § 6.

17-108.02 Officers and employees; merger of offices or employment; salaries.

(1) All officers and employees of a city of the second class shall receive such compensation as the mayor and city council may fix at the time of their appointment or employment subject to the limitations set forth in this section.

(2) The city council may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(3) The city manager in a city of the second class under the city manager plan of government as provided in Chapter 19, article 6, may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(4) The offices or employments merged and combined under subsection (2) or (3) of this section shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined.

(5) For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

Source: Laws 1879, § 7, p. 195; Laws 1881, c. 23, § 2, p. 168; Laws 1911, c. 16, § 1, p. 133; R.S.1913, § 5000; Laws 1919, c. 46, § 1, p. 130; C.S.1922, § 4169; C.S.1929, § 17-108; Laws 1935, c. 36, § 3, p. 149; C.S.Supp.,1941, § 17-108; Laws 1943, c. 30, § 2, p. 140; R.S.1943, § 17-108; Laws 1945, c. 25, § 1, p. 135; Laws 1947, c. 31, § 1(3), p. 140; Laws 1972, LB 1145, § 2; Laws 1984, LB 368, § 2; Laws 1984, LB 682, § 7; Laws 1990, LB 756, § 2; Laws 1990, LB 931, § 3; Laws 1991, LB 12, § 2; Laws 1994, LB 76, § 492; Laws 2017, LB133, § 7.

17-110 Mayor; general duties and powers.

The mayor shall preside at all meetings of the city council of a city of the second class. The mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council. He or she shall have superintendence and control of all the officers and affairs of the city and shall take care

that the ordinances of the city and all laws governing cities of the second class are complied with.

Source: Laws 1879, § 10, p. 195; R.S.1913, § 5002; C.S.1922, § 4171; C.S.1929, § 17-110; R.S.1943, § 17-110; Laws 1957, c. 55, § 3, p. 266; Laws 1975, LB 172, § 3; Laws 1980, LB 662, § 4; Laws 2013, LB113, § 1; Laws 2017, LB133, § 8.

17-111 Mayor; ordinances; veto power; passage over veto.

The mayor in any city of the second class shall have power to veto or sign any ordinance passed by the city council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or items of appropriations or claims, he or she shall return it to the city council stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, the mayor shall notify the city clerk of the veto in writing. The city clerk shall notify the city council in writing of the mayor's veto. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor may be passed over his or her veto by a vote of two-thirds of the members of the city council. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items vetoed may be passed by the city council over the veto as in other cases.

Source: Laws 1879, § 11, p. 195; R.S.1913, § 5003; C.S.1922, § 4172; C.S.1929, § 17-111; R.S.1943, § 17-111; Laws 2014, LB803, § 2; Laws 2017, LB133, § 9.

17-112 Mayor; recommendations to city council.

The mayor in any city of the second class shall, from time to time, communicate to the city council such information and recommend such measures as, in his or her opinion, may tend to the improvement of the finances, the police, health, security, ornament, comfort, and general prosperity of the city.

Source: Laws 1879, § 12, p. 196; R.S.1913, § 5004; C.S.1922, § 4173; C.S.1929, § 17-112; R.S.1943, § 17-112; Laws 2017, LB133, § 10.

17-113 Mayor; reports of officers; power to require.

The mayor in any city of the second class shall have the power, when he or she deems it necessary, to require any officer of the city to exhibit his or her accounts or other papers, and to make reports to the city council, in writing, touching any subject or matter pertaining to his or her office.

Source: Laws 1879, § 14, p. 196; R.S.1913, § 5005; C.S.1922, § 4174; C.S.1929, § 17-113; R.S.1943, § 17-113; Laws 2017, LB133, § 11.

17-114 Mayor; territorial jurisdiction.

The mayor in any city of the second class shall have such jurisdiction as may be vested in him or her by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him or her by ordinance, excepting taxation, within the extraterritorial zoning jurisdiction of such city.

Source: Laws 1879, § 15, p. 196; R.S.1913, § 5006; C.S.1922, § 4175; C.S.1929, § 17-114; R.S.1943, § 17-114; Laws 2017, LB133, § 12.

17-117 Mayor; remission of fines; pardons; powers.

The mayor of a city of the second class shall have power to remit fines and forfeitures and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

Source: Laws 1879, § 18, p. 196; R.S.1913, § 5009; C.S.1922, § 4178; C.S.1929, § 17-117; R.S.1943, § 17-117; Laws 2017, LB133, § 13.

17-118 Police; arrest; power.

The police officers of a city of the second class shall have the power to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as the county sheriff and to keep such offenders in the city prison, county jail, or other place of confinement to prevent their escape until trial can be had before the proper officer.

Source: Laws 1879, § 19, p. 197; R.S.1913, § 5010; C.S.1922, § 4179; C.S.1929, § 17-118; R.S.1943, § 17-118; Laws 1988, LB 1030, § 5; Laws 2017, LB133, § 14.

17-119 City overseer of streets; duties.

The city overseer of the streets of a city of the second class shall, subject to the orders of mayor and city council, have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the city council may require.

Source: Laws 1879, § 21, p. 197; R.S.1913, § 5012; C.S.1922, § 4181; C.S.1929, § 17-120; R.S.1943, § 17-119; Laws 2017, LB133, § 15.

17-120 Public morals; powers; restrictions.

A city of the second class shall have the power to restrain, prohibit, and suppress houses of prostitution, gambling and gambling houses, and other disorderly houses and practices, and all kinds of public indecencies, and all lotteries or fraudulent devices and practices for the purpose of obtaining money or property, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle

Act, or the State Lottery Act. The city may license, regulate, or prohibit billiard halls and billiard tables, pool halls and pool tables, and bowling alleys.

Source: Laws 1879, § 39, I, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5014; Laws 1917, c. 99, § 1, p. 263; C.S.1922, § 4183; C.S.1929, § 17-122; R.S.1943, § 17-120; Laws 1986, LB 1027, § 189; Laws 1991, LB 849, § 62; Laws 1993, LB 138, § 64; Laws 2017, LB133, § 16.

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.

17-121 Health and sanitation; rules and regulations; board of health; members; powers.

(1) A city of the second class shall have the power to make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city, to make quarantine laws for that purpose, and to enforce such regulations.

(2) In cities of the second class with a commission form of government as provided in Chapter 19, article 4, and cities of the second class with a city manager plan of government as provided in Chapter 19, article 6, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, and four 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 city manager has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(3) In all other cities of the second class, a board of health shall be created consisting of four members: The mayor, who shall be chairperson, the president of the city council, 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 mayor has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(4) 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 city, may enforce them, and may provide fines and punishments for the violation of such rules and regulations. The board of health shall have power to and shall make all necessary rules and regulations relating to matters of sanitation of such city, including the removal of dead animals, the sanitary condition of the streets, alleys, vacant grounds, stockyards, wells, cisterns, privies, waterclosets, cesspools, and all buildings and places not specified where filth, nuisances, or offensive matter is kept or is liable to or does accumulate. The board of health may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the state and ordinances of the city relating to nuisances or to matters of sanitation of such city. The board of health shall also have control of hospitals, dispensaries,

places for treatment of sick, and related matters under such restrictions and provisions as may be provided by ordinance of such city.

Source: Laws 1879, § 39, II, p. 201; Laws 1881, c. 24, § 1, p. 194; Laws 1895, c. 14, § 1, II, p. 109; R.S.1913, § 5015; Laws 1919, c. 44, § 1, p. 128; C.S.1922, § 4184; C.S.1929, § 17-123; R.S.1943, § 17-121; Laws 1977, LB 190, § 2; Laws 1993, LB 119, § 2; Laws 1994, LB 1019, § 2; Laws 1996, LB 1162, § 1; Laws 2017, LB133, § 17.

17-122 Hospital; establishment and control.

A city of the second class shall have the power to erect, establish, and regulate hospitals and to provide for the government and support of such hospitals.

Source: Laws 1879, § 39, III, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5016; C.S.1922, § 4185; C.S.1929, § 17-124; R.S. 1943, § 17-122; Laws 2017, LB133, § 18.

17-123 Public health; regulations; water; power to supply.

A city of the second class shall have the power to make regulations to secure the general health of the city, to prevent and remove nuisances within the city and within its extraterritorial zoning jurisdiction, and to provide the city with water.

Source: Laws 1879, § 39, IV, p. 201; Laws 1881, c. 24, § 1, p. 194; R.S.1913, § 5017; C.S.1922, § 4186; C.S.1929, § 17-125; R.S. 1943, § 17-123; Laws 2015, LB266, § 8; Laws 2017, LB133, § 19.

17-123.01 Transferred to section 17-573.

17-124 Police; power to establish.

A city of the second class shall have the power to establish a night watch and police and to define the duties and powers of such night watch and police.

Source: Laws 1879, § 39, V, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5018; C.S.1922, § 4187; C.S.1929, § 17-126; R.S. 1943, § 17-124; Laws 2017, LB133, § 20.

17-126 Public market; establishment; regulation.

A city of the second class shall have the power to purchase, hold, and own grounds for and to erect, establish, and regulate market houses and market places.

Source: Laws 1879, § 39, VII, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5020; C.S.1922, § 4189; C.S.1929, § 17-128; R.S. 1943, § 17-126; Laws 2017, LB133, § 21.

17-127 Public buildings; power to erect.

A city of the second class shall have the power to provide for the erection and government of any useful or necessary building for the use of the city.

Source: Laws 1879, § 39, VIII, p. 201; Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5021; C.S.1922, § 4190; C.S.1929, § 17-129; R.S. 1943, § 17-127; Laws 2017, LB133, § 22.

17-128 Repealed. Laws 2017, LB133, § 331.

17-129 Disorderly conduct; power to prevent.

A city of the second class shall have the power to prevent intoxication, fighting, quarreling, dog fights, cock fights, and all disorderly conduct.

Source: Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5023; C.S.1922, § 4192; C.S.1929, § 17-131; R.S.1943, § 17-129; Laws 2017, LB133, § 23.

17-130 Fire escapes; exits; regulation.

A city of the second class shall have the power to regulate the use of any opera house, city hall, church, or other building used by the people for worship, for amusement, or for public assemblages to ensure that such opera house, city hall, church, or other building is provided with suitable, ample, and sufficient fire escapes and suitable, ample, and sufficient means of exit and entrance.

Source: Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5024; C.S.1922, § 4193; C.S.1929, § 17-132; R.S.1943, § 17-130; Laws 2017, LB133, § 24.

17-131 Safety regulations.

A city of the second class shall have the power to prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings and to prescribe and direct the number and construction of means of exit and entrance and the construction of fire escapes in such buildings.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5025; C.S.1922, § 4194; C.S.1929, § 17-133; R.S.1943, § 17-131; Laws 2017, LB133, § 25.

17-132 Places of amusement; safety regulations; revocation of license.

A city of the second class shall have the power (1) to regulate, license, tax, and suppress places of amusement, (2) to revoke the licenses of such places when they are not provided with sufficient and ample means of exit and entrance or when the licensee has been convicted of any violation of the ordinances in relation to such places, and (3) to declare from time to time when such place or places are unsafe for such uses.

Source: Laws 1881, c. 24, § 1, p. 195; R.S.1913, § 5026; C.S.1922, § 4195; C.S.1929, § 17-134; R.S.1943, § 17-132; Laws 2017, LB133, § 26.

17-133 Repealed. Laws 2017, LB133, § 331.

17-134 Peddlers; pawnbrokers; entertainers; licensing and regulation.

A city of the second class shall have the power by ordinance to license, tax, suppress, regulate, and prohibit hawkers, peddlers, pawnbrokers, theatrical and other exhibitions, shows, and other amusements and to revoke such licenses for violation of such ordinances.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5028; C.S.1922, § 4197; C.S.1929, § 17-136; R.S.1943, § 17-134; Laws 2017, LB133, § 27.

17-135 Repealed. Laws 2017, LB133, § 331.

17-136 Fire hazards; dangerous buildings; elimination.

A city of the second class shall have the power to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, or boilers used in and about any building and to cause such to be removed or placed in a safe condition, as the city council may prescribe by ordinance. Such city may regulate and prevent by ordinance the deposit of ashes in unsafe places and cause all dangerous buildings and enclosures to be put in safe condition.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5030; C.S.1922, § 4199; C.S.1929, § 17-138; R.S.1943, § 17-136; Laws 2017, LB133, § 28.

17-137 Explosives; storage; fireworks; regulation.

A city of the second class shall have the power to (1) regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum, or any of the productions thereof and other material, (2) regulate the use of lights in stables and shops and other places, (3) regulate the building of bonfires, and (4) regulate, prohibit, and restrain the use of fireworks, firecrackers, Roman candles, sky rockets, and other pyrotechnic displays.

Source: Laws 1881, c. 24, § 1, p. 196; R.S.1913, § 5031; C.S.1922, § 4200; C.S.1929, § 17-139; R.S.1943, § 17-137; Laws 2017, LB133, § 29.

17-138 Animals; cruelty, prevention of.

A city of the second class shall have the power by ordinance to prohibit and punish cruelty to animals.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5032; C.S.1922, § 4201; C.S.1929, § 17-140; R.S.1943, § 17-138; Laws 2017, LB133, § 30.

17-139 Traffic; sales; regulation.

A city of the second class shall have the power by ordinance to regulate traffic and sales upon the streets, the sidewalks, and other public places.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5033; C.S.1922, § 4202; C.S.1929, § 17-141; R.S.1943, § 17-139; Laws 2017, LB133, § 31.

17-140 Signs and handbills; regulation.

A city of the second class shall have the power to regulate and prevent the use of streets, sidewalks, and public grounds for signs, sign posts, racks, and the posting of handbills and advertisements.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5034; C.S.1922, § 4203; C.S.1929, § 17-142; R.S.1943, § 17-140; Laws 2017, LB133, § 32.

17-141 Sidewalks and substructures; regulation.

A city of the second class shall have the power to regulate the use of sidewalks and all structures thereunder.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5035; C.S.1922, § 4204; C.S.1929, § 17-143; R.S.1943, § 17-141; Laws 2017, LB133, § 33.

17-142 Streets; moving of buildings; other obstructions; regulation.

A city of the second class shall have the power to regulate and prevent the moving of buildings through the streets and to regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5036; C.S.1922, § 4205; C.S.1929, § 17-144; R.S.1943, § 17-142; Laws 2017, LB133, § 34.

17-143 Railroads; location, grade, and crossing; regulation.

A city of the second class shall have the power to provide for and change the location, grade, and crossing of any railroad.

Source: Laws 1881, c. 24, § 1, p. 197; R.S.1913, § 5037; C.S.1922, § 4206; C.S.1929, § 17-145; R.S.1943, § 17-143; Laws 2017, LB133, § 35.

17-144 Repealed. Laws 2017, LB133, § 331.

17-145 Sewers and drains; regulation.

A city of the second class shall have the power to construct and keep in repair culverts, drains, sewers, and cesspools and to regulate the use of such culverts, drains, sewers, and cesspools.

Source: Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5039; C.S.1922, § 4208; C.S.1929, § 17-147; R.S.1943, § 17-145; Laws 2017, LB133, § 36.

17-146 Refunding bonds; power to issue.

A city of the second class shall have the power to issue bonds in place of or to supply means to meet its maturing bonds or for the consolidation or funding of such bonds.

Source: Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5040; C.S.1922, § 4209; C.S.1929, § 17-148; R.S.1943, § 17-146; Laws 2017, LB133, § 37.

17-147 Fire department; organization and equipment.

A city of the second class shall have the power to procure fire engines, hooks, ladders, buckets, and other apparatus, to organize fire engine, hook and ladder, and bucket companies, to prescribe rules of duty and the government of the fire department with such penalties as the city council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriations for the fire department.

Source: Laws 1879, § 39, IX, p. 201; Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5041; C.S.1922, § 4210; C.S.1929, § 17-149; R.S. 1943, § 17-147; Laws 2017, LB133, § 38.

17-148 City council; president; acting president; powers.

In each city of the second class, the city council shall elect one of its own body who shall be styled the president of the city council and who shall preside at all meetings of the city council in the absence of the mayor. In the absence of the president, the city council shall elect one of its own body to occupy his or her place temporarily, who shall be styled acting president of the city council. The president, and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the city council; and all acts of the president or acting president, while so acting, shall be as binding upon the city council and upon the city as if done by the mayor.

Source: Laws 1879, § 39, X, p. 201; Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5042; C.S.1922, § 4211; C.S.1929, § 17-150; R.S. 1943, § 17-148; Laws 2017, LB133, § 39.

17-149 Transferred to section 17-574.

17-149.01 Transferred to section 17-575.

17-150 Sewerage system; establishment; estimates; duties of engineer; contracts; advertisement for bids.

The city engineer in a city of the second class, when ordered to do so by the city council, shall make all surveys, estimates, and calculations necessary to be made for the establishment of a sewerage system and of the cost of labor and materials for such system. The mayor and city council may employ a special engineer to make or assist in making any such estimate or survey, and any such estimate or survey shall have the same validity and serve in all respects as though made by the city engineer. Before the city council shall make any contract for building any such sewers or any part of such sewers, an estimate of the cost of such sewers shall be made by the city engineer, or by a special engineer as provided by this section, and submitted to the city council, and no contract shall be entered into for the building of any such sewers or any part of such sewers for a price exceeding such estimate. In advertising for bids for any such work or materials, the city council shall cause the amount of such estimate to be published with such advertisement for at least twenty days in a legal newspaper in or of general circulation in the city.

Source: Laws 1903, c. 22, § 2, p. 255; R.S.1913, § 5044; C.S.1922, § 4213; C.S.1929, § 17-152; R.S.1943, § 17-150; Laws 2017, LB133, § 40.

17-151 Sewerage system; establishment; borrowing money; conditions precedent.

Before submitting any proposition for borrowing money for the purposes mentioned in section 17-150, the mayor and city council of a city of the second class shall determine upon a system of sewerage and shall procure from the city engineer an estimate of the actual cost of such system and of the cost of the portion of such sewer as the mayor and city council may propose to construct, with the amount proposed to be borrowed and the plans of such system. Such estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the time such proposition to borrow money shall be pending. After such system shall have been adopted, no change shall be made to such system involving an expense of more than one thousand dollars, nor shall any other system be adopted in lieu of such system, unless authorized by a vote of the people.

Source: Laws 1903, c. 22, § 4, p. 256; R.S.1913, § 5045; C.S.1922, § 4214; C.S.1929, § 17-153; R.S.1943, § 17-151; Laws 2017, LB133, § 41.

17-153 Sewerage system; bonds; sinking funds; investment.

All taxes levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the bonds provided for in section 17-925, shall be payable in money only. Except as otherwise provided, no money so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which they shall have been raised. Such sinking fund may, under the direction of the mayor and city council, be invested in any of the underdue bonds issued by such city of the second class, and such bonds may be procured by the city treasurer at such rate of premium as shall be prescribed by ordinance. Any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the city treasurer, out of any fund specially created for that purpose, without any further order or allowance by the mayor and city council.

Source: Laws 1903, c. 22, § 8, p. 258; R.S.1913, § 5047; C.S.1922, § 4216; C.S.1929, § 17-155; R.S.1943, § 17-153; Laws 2017, LB133, § 42.

17-154 Sewers; right-of-way; condemnation; procedure.

In case of the refusal of the owner or owners or claimant or claimants of any lands or any right-of-way, or any easement in any lands through which cities of the second class propose to construct any sewer or drain or any outlet for any sewer or drain, to allow the passage of such sewer or drain, the city proposing to construct such sewer or drain, and desiring the right-of-way may proceed to acquire such right-of-way by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1905, c. 28, § 1, p. 253; R.S.1913, § 5049; C.S.1922, § 4218; C.S.1929, § 17-157; R.S.1943, § 17-154; Laws 1951, c. 101, § 55, p. 472; Laws 2017, LB133, § 43.

17-155 Board of equalization; counties under township organization; members; meetings.

In all cities of the second class in counties under township organization, the city council shall constitute a board of equalization for such city, whose duty it

shall be to meet and equalize the assessments of such city at the same time and in the same manner as provided by law for townships in counties under township organization.

Source: Laws 1889, c. 76, § 1, p. 537; R.S.1913, § 5050; C.S.1922, § 4219; C.S.1929, § 17-158; R.S.1943, § 17-155; Laws 2017, LB133, § 44.

17-157 Joint city and school district facility; expense; bonds; election; approval by electors.

The cost and expense of acquiring land for, erecting, equipping, furnishing, and maintaining a joint municipal and recreation building or joint recreational and athletic field under section 17-156 shall be borne by the school district and city of the second class in the proportion determined by the board of education of the school district and the city council. The building shall not be erected or contracted to be erected, no land shall be acquired for such buildings, and no bonds shall be issued or sold by the school district or the city of the second class until the school district and the city of the second class have each been authorized to issue bonds to defray its proportion of the cost of such land, building, equipment, and furnishings by the required number of electors of the school district and the city of the second class in the manner provided by sections 10-702 to 10-716 and 17-954. When funds and property are available for such purpose, land may be acquired, buildings erected, or equipment and furnishings supplied by a joint resolution of the school district and the city of the second class without a vote of the people.

Source: Laws 1953, c. 37, § 2, p. 128; Laws 1955, c. 39, § 2, p. 152; Laws 2017, LB133, § 45.

17-158 Joint city and school district facility; indebtedness; bonds; principal and interest; in addition to other limitations.

The amount of indebtedness, authorized to be incurred by any school district or city of the second class for the payment of principal and interest for the bonds authorized by the provisions of sections 17-156 to 17-162 shall be in addition to and over and above any limits under applicable law.

Source: Laws 1953, c. 37, § 3, p. 128; Laws 2017, LB133, § 46.

17-159 Joint city and school district facility; city council and board of education; building commission; powers; duties.

The members of the board of education of the school district and the city council of the city of the second class, which board and city council have agreed to build a joint municipal and recreation building or joint recreational and athletic field under sections 17-156 to 17-162, shall be the building commission to purchase the land for the building and to contract for the erection, equipment, and furnishings of the building or the recreational and athletic field. After the completion of such building or field, the building commission shall be in charge of the maintenance and repair of such building or field.

Source: Laws 1953, c. 37, § 4, p. 129; Laws 1955, c. 39, § 3, p. 153; Laws 2017, LB133, § 47.

17-160 Joint city and school district facility; building commission; plans and specifications; personnel; compensation; contracts.

The building commission shall cause to be prepared building plans and specifications for the joint building or joint recreational and athletic field and may employ architects, engineers, and such clerical help as may be deemed necessary for the purpose of preparing such plans and specifications. The compensation of such personnel shall be fixed by the commission and shall be paid in the same proportion as determined for defraying the cost of such building or field as provided for in section 17-157. The contract for erecting the building, for the equipment, and for furnishings shall be let by the commission in the same manner as for other public buildings. The members of the commission shall receive no compensation for their services as members of the commission.

Source: Laws 1953, c. 37, § 5, p. 129; Laws 1955, c. 39, § 4, p. 153; Laws 2017, LB133, § 48.

17-161 Joint city and school district facility; annual budget of city and school district.

The school district and the city of the second class shall each provide in their annual budgets an item for their proportion of the expense of maintaining any joint municipal and recreation building or joint recreational and athletic field built pursuant to section 17-156.

Source: Laws 1953, c. 37, § 6, p. 129; Laws 1955, c. 39, § 5, p. 154; Laws 2017, LB133, § 49.

17-162 Joint city and school district facility; building commission; accept gifts.

The building commission shall have the power to accept gifts, devise, and bequests of real and personal property to carry out the purposes of sections 17-156 to 17-162 and, to the extent of the powers conferred upon the building commission by sections 17-156 to 17-162, to execute and carry out such conditions as may be annexed to any such gifts, devise, or bequests.

Source: Laws 1953, c. 37, § 7, p. 129; Laws 2017, LB133, § 50.

17-163 Offstreet parking; declaration of purpose.

The Legislature finds and declares that the great increase in the number of motor vehicles, buses, and trucks in Nebraska has created hazards to life and property in cities of the second class in the state. In order to remove or reduce such hazards to life and property and the inconvenience of congested traffic on the streets in such cities in this state, it is hereby deemed necessary and of general benefit to the entire State of Nebraska to provide means for such cities in Nebraska to own offstreet vehicle parking facilities exclusively for the parking of motor vehicles.

Source: Laws 1957, c. 29, § 1, p. 185; Laws 2017, LB133, § 51.

Cross References

For applicability of sections 17-163 to 17-173 to villages, see sections 17-207.01 and 17-207.02.

17-164 Offstreet parking; facilities; acquisition; procedure.

Any city of the second class is hereby authorized to own, purchase, construct, equip, lease, or operate within such city offstreet motor vehicle parking facilities for the use of the general public. This does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided in this section. Such city shall have the authority to acquire by grant, contract, purchase, or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct such facilities, necessary or convenient in the carrying out of this section. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication in a legal newspaper in or of general circulation in the city once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the application or applications have been disapproved by the city council within ninety days from the first date of publication, then such city may proceed in the exercise of the powers granted under this section.

Source: Laws 1957, c. 29, § 2, p. 186; Laws 2017, LB133, § 52.

17-165 Offstreet parking; revenue bonds; issuance; terms.

In order to pay the cost required by any purchase, construction, lease, or condemnation of property and equipping of parking facilities or the enlargement of presently owned parking facilities, a city of the second class may issue revenue bonds to provide the funds for such improvements. Such revenue bonds shall not be payable from any general tax upon the issuing city, but shall be a lien only upon the revenue and earnings of the parking facilities. Such revenue bonds shall mature in not to exceed forty years but may be optional prior to maturity at a premium as provided in the authorizing resolution or ordinance. Any such revenue bonds which may be issued shall not be included in computing the maximum amounts of bonds which the issuing city may be authorized to issue under its charter or any statute of this state. Such revenue bonds may be issued and sold or delivered to the contractor at par and accrued interest for the amount of work performed. If any city of the second class has installed or installs onstreet parking meters, it may pledge all or any part of the revenue of such parking meters, not previously pledged, as security for the bonds authorized under sections 17-163 to 17-173.

Source: Laws 1957, c. 29, § 3, p. 186; Laws 1969, c. 51, § 42, p. 297; Laws 2017, LB133, § 53.

17-166 Offstreet parking; plans and specifications; coordination with traffic control program.

Before the issuance of any revenue bonds under section 17-165, the city of the second class shall have an independent and qualified firm of engineers prepare plans and specifications for such improvements. In the preparation of the plans and specifications, the independent engineer shall collaborate and counsel with any city engineering or traffic departments so as to coordinate the program with the program for the control of traffic within such city.

Source: Laws 1957, c. 29, § 4, p. 187; Laws 2017, LB133, § 54.

17-167 Offstreet parking; city council; rules and regulations; contracts; rates.

Before the issuance of any revenue bonds as provided under section 17-165, the city council of a city of the second class shall make all necessary rules and regulations governing the use, operation, and control of such improvements. In carrying out sections 17-163 to 17-173, the city of the second class may make contracts with other departments of the city, or others, if such contracts are necessary and needed for the payment of the revenue bonds authorized under section 17-165 and for the successful operation of the parking facilities. The city council shall also establish and maintain equitable rates or charges for such services sufficient in amount to pay for the cost of operation, repair, and upkeep of the facilities to be purchased, acquired, or leased and the principal of and interest on any revenue bonds issued pursuant to sections 17-163 to 17-173. The city council may also make any other agreements with the purchasers of the bonds for the security of the issuing city and the purchasers of such bonds not in contravention with sections 17-163 to 17-173.

Source: Laws 1957, c. 29, § 5, p. 187; Laws 2017, LB133, § 55.

17-168 Offstreet parking; acquisition of facilities; submission at election; notice.

The mayor and city council of any city of the second class may adopt by ordinance the proposition to make such purchase, or to erect such facility or facilities, set forth in section 17-164, and before the purchase can be made or facility created, must submit the question to the electors of such city at a general municipal election or at a special election called for that purpose and the question must be approved by a majority of the electors voting on such question. If the question is submitted at a special election, the vote for the purchase or acquisition of such real estate or the purchase or erection of such facility or facilities shall equal at least a majority of the votes cast at the last preceding general election. Notice of the time and place of the election shall be given by publication in a legal newspaper in or of general circulation in such city three successive weeks prior to such election.

Source: Laws 1957, c. 29, § 6, p. 188; Laws 2017, LB133, § 56.

17-169 Offstreet parking; facilities; lease; controls retained; business restricted.

On the creation of a motor vehicle parking facility as provided under section 17-164 for the use of the general public, the city of the second class may lease such facility to one or more operators to provide for the efficient operation of the facility. Such lease shall be let on a competitive basis, and no lease shall run for a period in excess of ten years. In granting any lease, the city shall retain such control of the facility as may be necessary to insure that the facility will be properly operated in the public interest and that the prices charged are reasonable. The provisions of sections 17-163 to 17-173 shall not be construed to authorize the city or the lessee of the facility to engage in the sale of any commodity, product, or service or to engage in any business other than the purposes set forth in section 17-164.

Source: Laws 1957, c. 29, § 7, p. 188; Laws 2017, LB133, § 57.

17-170 Offstreet parking; private parking lot; not subject to eminent domain.

Property now used or hereafter acquired within the boundaries of a city of the second class for offstreet motor vehicle parking by a private operator shall not be subject to condemnation.

Source: Laws 1957, c. 29, § 8, p. 188; Laws 2017, LB133, § 58.

17-171 Offstreet parking; rights of bondholders.

The provisions of sections 17-163 to 17-173 and of any ordinance authorizing the issuance of bonds under sections 17-163 to 17-173 shall constitute a contract with the holders of such bonds, and any holder of a bond or bonds or any of the coupons of any bond or bonds of such city, issued under the provisions of sections 17-163 to 17-173, may either in law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of all duties required by the provisions of sections 17-163 to 17-173 or by the ordinance authorizing the bonds, including the making and collection of sufficient charges and fees for service and the use thereof and the application of income and revenue thereof.

Source: Laws 1957, c. 29, § 9, p. 189; Laws 2017, LB133, § 59.

17-172 Offstreet parking; revenue; use.

Any city of the second class is authorized to use any or all of the revenue from onstreet parking meters for the purpose set forth in section 17-164 if such revenue has not been pledged for the payment of revenue bonds authorized in sections 17-163 to 17-173.

Source: Laws 1957, c. 29, § 10, p. 189; Laws 2017, LB133, § 60.

17-174 City of second class; public passenger transportation system; acquire; accept funds; administration; powers.

A city of the second class shall have the power by ordinance to acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, and operate, or contract for the operation of public passenger transportation systems, excluding railroad systems, including all property and facilities required for such public passenger transportation systems, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city in such property, to exercise all powers granted by the Constitution and laws of the State of Nebraska, including, but not limited to, receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation, donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems, and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, and to exercise such other and further powers with respect thereto as may be necessary, incident, or appropriate to the powers of such city.

Source: Laws 1975, LB 395, § 2; Laws 1999, LB 87, § 62; Laws 2017, LB133, § 61.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

ARTICLE 2

LAWs APPLICABLE ONLY TO VILLAGES

Section

- 17-201. Village, defined; incorporation; restriction on territory; condition.
- 17-201.01. Villages; incorporation; presumption of regularity of proceedings.
- 17-202. Board of trustees; election; terms.
- 17-204. Board of trustees; oath; meetings.
- 17-205. Board of trustees; quorum; compulsory attendance.
- 17-206. Board of trustees; journal; roll calls; public proceedings.
- 17-207. Board of trustees; powers; restrictions.
- 17-207.01. Offstreet motor vehicle parking; acquisition; procedure.
- 17-208. Appointive officers; term of office; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.
- 17-209. Appointed officers and employees; compensation; fixed by ordinance.
- 17-209.02. Officers and employees; merger of offices; salaries.
- 17-210. Board of trustees; ordinances; publication; chairperson pro tempore.
- 17-211. Elections; notice.
- 17-212. Elections; officers of election; vacancies; how filled.
- 17-213. Village chief of police; powers and duties.
- 17-213.01. Village engineer; powers and duties.
- 17-214. Village overseer of streets; power and duties.
- 17-215. Village; dissolution; how effected.
- 17-216. Village; dissolution; petition or resolution; election.
- 17-217. Village; dissolution; election; form of ballot.
- 17-218. Village; dissolution; when effective.
- 17-219. Village; dissolution; village property, records, and funds; disposition.
- 17-219.01. Village; dissolution; property; sale by county board; when authorized.
- 17-219.02. Village; dissolution; property; sale; notice.
- 17-219.03. Village; dissolution; board of trustees; county board; duties.
- 17-220. Village situated in more than one county; how organized.
- 17-222. Village situated in more than one county; jails.
- 17-223. Village situated in more than one county; tax; how certified.
- 17-224. Village situated in more than one county; legal notices; publication.
- 17-225. Railroads; blocking crossings; penalty.
- 17-229. Street improvement program; authorization; tax levy.
- 17-230. Street improvement program; tax levy limitation.
- 17-231. Street improvement program; construction of improvements; issuance of warrants; interest; unused funds transferred to general fund.

17-201 Village, defined; incorporation; restriction on territory; condition.

(1) Any municipality containing not less than one hundred nor more than eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census incorporated as a village under the laws of this state, any village that votes to retain village government as provided in section 17-312, and any city of the second class that has adopted village government as provided by sections 17-306 to 17-309 shall be a village and shall have the rights, powers, and immunities granted by law to villages. The population of a village shall consist of the people residing within the territorial boundaries of such village and the residents of any territory duly and properly annexed to such village.

(2) Whenever a majority of the inhabitants of any village, not incorporated under any laws of this state, present a petition to the county board of the county

in which the petitioners reside, requesting that they may be incorporated as a village and designating the name they wish to assume and the metes and bounds of the proposed village, and a majority of the members of such county board are satisfied that a majority of the inhabitants of the proposed village have signed such petition and that inhabitants to the number of one hundred or more are actual residents of the territory described in the petition, the county board shall declare the proposed village incorporated, enter the order of incorporation upon its records, and designate the metes and bounds of such village. Thereafter the village shall be governed by the provisions of law applicable to the government of villages. The county board shall, at the time of the incorporation of the village, appoint five persons, having the qualifications provided in section 17-203, as the village board of trustees, who shall hold their offices and perform all the duties required of them by law until the election and qualification of their successors at the time and in the manner provided in section 17-202, except that the county board shall not declare a proposed village incorporated or enter an order of incorporation if any portion of the territory of such proposed village is within five miles of another incorporated municipality.

Source: Laws 1879, § 40, p. 202; Laws 1881, c. 22, § 1, p. 165; Laws 1913, c. 137, § 1, p. 335; R.S.1913, § 5051; C.S.1922, § 4223; C.S.1929, § 17-201; R.S.1943, § 17-201; Laws 1961, c. 48, § 1, p. 188; Laws 1969, c. 91, § 1, p. 454; Laws 1971, LB 62, § 2; Laws 1993, LB 726, § 7; Laws 2014, LB702, § 2; Laws 2017, LB113, § 13; Laws 2017, LB133, § 62.

17-201.01 Villages; incorporation; presumption of regularity of proceedings.

When a county board has entered an order declaring any village within the county as incorporated, it shall be conclusively presumed that such incorporation and all proceedings in connection therewith are valid in all respects notwithstanding some defect or defects that may appear on the face of the record, or the absence of any record, unless an action shall be brought within one year from the date of entry of such order of the county board, attacking its validity.

Source: Laws 1961, c. 48, § 2, p. 189; Laws 2017, LB133, § 63.

17-202 Board of trustees; election; terms.

The corporate powers and duties of every village shall be vested in a board of trustees which shall consist of five members. At the first statewide general election held after the incorporation of a village, two trustees shall be elected to serve two years and three trustees shall be elected to serve four years. Thereafter the board members shall be elected as provided in the Election Act. The terms shall begin on the first regular meeting of the board in December following the statewide general election. The changes made to this section by Laws 1994, LB 76, and Laws 1995, LB 194, shall not change the staggering of the terms of the board members in villages established prior to January 1, 1995.

Source: Laws 1879, § 41, p. 202; Laws 1899, c. 13, § 1, p. 78; R.S.1913, § 5052; C.S.1922, § 4224; C.S.1929, § 17-202; Laws 1943, c. 26, § 1, p. 120; R.S.1943, § 17-202; Laws 1969, c. 257, § 9, p. 936; Laws 1994, LB 76, § 493; Laws 1995, LB 194, § 3; Laws 2017, LB133, § 64.

Cross References

Board of trustees, election, see section 32-532.

Election Act, see section 32-101.

Vacancies, see sections 32-568 and 32-569.

17-204 Board of trustees; oath; meetings.

Every village trustee, before entering upon the duties of his or her office, shall take an oath to support the Constitution of the United States and the Constitution of Nebraska and faithfully and impartially to discharge the duties of his or her office. Every village board of trustees appointed by the county board shall meet within twenty days, organize, and appoint the officers required by law. All trustees elected to office shall qualify and meet on the first regular meeting of the village board of trustees in December thereafter, organize, elect a chairperson of the board of trustees, and appoint the officers required by law. The village board of trustees shall, by ordinance, fix the time and place of holding its stated meetings and may be convened at any time by the chairperson.

Source: Laws 1879, § 43, p. 203; Laws 1913, c. 216, § 1, p. 646; R.S.1913, § 5054; C.S.1922, § 4226; C.S.1929, § 17-204; R.S. 1943, § 17-204; Laws 1974, LB 897, § 1; Laws 1995, LB 194, § 4; Laws 2017, LB133, § 65.

17-205 Board of trustees; quorum; compulsory attendance.

At all meetings of the village board of trustees, a majority of the trustees shall constitute a quorum to do business. A smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as prescribed by the village board of trustees by ordinance.

Source: Laws 1879, § 44, p. 203; R.S.1913, § 5055; C.S.1922, § 4227; C.S.1929, § 17-205; R.S.1943, § 17-205; Laws 2017, LB133, § 66.

17-206 Board of trustees; journal; roll calls; public proceedings.

The village board of trustees shall keep a journal of the board's proceedings and, at the desire of any member, shall cause the yeas and nays to be taken and entered on the journal on any question or ordinance, and the proceedings shall be public.

Source: Laws 1879, § 45, p. 203; R.S.1913, § 5056; C.S.1922, § 4228; C.S.1929, § 17-206; R.S.1943, § 17-206; Laws 2017, LB133, § 67.

17-207 Board of trustees; powers; restrictions.

The village board of trustees shall have power to pass ordinances: (1) To prevent and remove nuisances within the village or within its extraterritorial zoning jurisdiction; (2) to restrain and prohibit gambling; (3) to provide for licensing and regulating theatrical and other amusements within the village; (4) to prevent the introduction and spread of contagious diseases; (5) to establish and regulate markets; (6) to erect and repair bridges; (7) to erect, repair, and regulate wharves; (8) to regulate the landing of watercraft; (9) to provide for the inspection of building materials to be used or offered for sale in the village; (10) to govern the planting and protection of shade trees in the streets and the

building of structures projecting upon or over and adjoining, and all excavations through and under, the sidewalks of the village; (11) to maintain the peace, good government, and welfare of the village and its trade and commerce; and (12) to enforce all ordinances by inflicting penalties upon inhabitants or other persons, for the violation of such ordinances, not exceeding five hundred dollars for any one offense, recoverable with costs. Nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1879, § 46, p. 203; Laws 1907, c. 15, § 1, p. 123; R.S.1913, § 5057; C.S.1922, § 4229; C.S.1929, § 17-207; R.S.1943, § 17-207; Laws 1986, LB 1027, § 190; Laws 1991, LB 849, § 63; Laws 1993, LB 138, § 65; Laws 1999, LB 128, § 1; Laws 2015, LB266, § 10; Laws 2017, LB133, § 68.

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.

17-207.01 Offstreet motor vehicle parking; acquisition; procedure.

Any village is hereby authorized to own, purchase, construct, equip, lease, or operate within such village offstreet motor vehicle parking facilities for the use of the general public. This does not include the power to engage, directly or indirectly, in the sale of gasoline, oil, or other merchandise or in the furnishing of any service other than that of parking motor vehicles as provided in this section. Such village shall have the authority to acquire by grant, contract, purchase, or through the condemnation of property, as provided by law for such acquisition, all real or personal property, including a site or sites on which to construct such facilities, necessary or convenient in the carrying out of this section. Before any village may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication in a legal newspaper in or of general circulation in the village once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities. If no application or applications have been received or, if received, the application or applications have been disapproved by the village board of trustees within ninety days from the first date of publication, then such village may proceed in the exercise of the powers granted under this section.

Source: Laws 1961, c. 50, § 1, p. 191; Laws 2017, LB133, § 69.

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, engineer, overseer of the streets, and chief of police and other such officers as shall be required by ordinance or otherwise required by law.

(2)(a) The village chief of police or any other police officer may appeal to the village board of trustees his or her removal, demotion, or suspension with or

without pay. After a hearing, the village board of trustees 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 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 chief of police, upon the written accusation of the village chief of police, the chairperson of the village board of trustees, 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 of trustees for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board of trustees shall vote to uphold, reverse, or modify the action. The failure of the village board of trustees 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 of trustees 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 of trustees, 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 medical advisor to the board of health. If the village board of trustees has appointed a chief of police, the chief of police may be appointed to the board of health 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 such rules and regulations and provide fines and punishments for violations.

(4) The village clerk, treasurer, attorney, engineer, 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 of trustees with the advice and consent of the village board of 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; Laws 2017, LB133, § 70.

17-209 Appointed officers and employees; compensation; fixed by ordinance.

The appointive officials and other employees of the village shall receive such compensation as the chairperson and village board of trustees shall designate by ordinance; and the annual salary of the chairperson and other members of the village board of trustees shall be fixed by ordinance.

Source: Laws 1879, § 48, p. 204; Laws 1885, c. 18, § 1, p. 159; R.S.1913, § 5059; C.S.1922, § 4231; C.S.1929, § 17-209; Laws 1935, c. 36, § 4, p. 149; Laws 1937, c. 32, § 1, p. 157; C.S.Supp.,1941, § 17-209; Laws 1943, c. 30, § 3, p. 140; R.S.1943, § 17-209; Laws 1945, c. 26, § 1, p. 137; Laws 1947, c. 31, § 2(1), p. 141; Laws 1949, c. 21, § 2, p. 92; Laws 1961, c. 49, § 1, p. 190; Laws 1969, c. 89, § 2, p. 452; Laws 2017, LB133, § 71.

17-209.02 Officers and employees; merger of offices; salaries.

The village board of trustees may by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except trustee, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time, except that trustees may perform and upon village board of trustees approval receive compensation for seasonal or emergency work subject to sections 49-14,103.01 to 49-14,103.06. The offices or employments so merged and combined shall always be construed to be separate and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined. For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

Source: Laws 1945, c. 25, § 2, p. 135; R.S.Supp.,1945, § 17-209.01; Laws 1972, LB 1032, § 106; Laws 1984, LB 368, § 3; Laws 1984, LB 682, § 8; Laws 1986, LB 548, § 9; Laws 1990, LB 756, § 3; Laws 2017, LB133, § 72.

17-210 Board of trustees; ordinances; publication; chairperson pro tempore.

The chairperson of the village board of trustees shall cause the ordinances of the village to be printed and published for the information of the inhabitants

and cause such ordinances to be carried into effect. In the absence of the chairperson from any meeting of the village board of trustees, the village board of trustees shall have power to appoint a chairperson pro tempore, who shall exercise and have the powers and perform the same duties as the regular chairperson.

Source: Laws 1879, § 49, p. 204; R.S.1913, § 5060; C.S.1922, § 4232; C.S.1929, § 17-210; R.S.1943, § 17-210; Laws 2017, LB133, § 73.

17-211 Elections; notice.

The village clerk shall give public notice of the time and place of holding each village election, the notice to be given not less than ten nor more than twenty days previous to the election in a legal newspaper in or of general circulation in the village.

Source: Laws 1879, § 50, p. 205; R.S.1913, § 5061; C.S.1922, § 4233; C.S.1929, § 17-211; R.S.1943, § 17-211; Laws 1959, c. 60, § 54, p. 272; Laws 2017, LB133, § 74.

17-212 Elections; officers of election; vacancies; how filled.

If, on any day appointed for holding any village election, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

Source: Laws 1879, § 51, p. 205; R.S.1913, § 5062; C.S.1922, § 4234; C.S.1929, § 17-212; R.S.1943, § 17-212; Laws 2017, LB133, § 75.

17-213 Village chief of police; powers and duties.

The village chief of police shall have power to make or order an arrest with proper process for any offense against the laws of the state or ordinances of the village and bring the offender to trial before the proper officer and to arrest without process in all cases where any such offense shall be committed or attempted to be committed in his or her presence.

Source: Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5063; C.S.1922, § 4235; C.S.1929, § 17-213; R.S.1943, § 17-213; Laws 1972, LB 1032, § 106; Laws 2017, LB133, § 76.

Cross References

Ticket quota requirements, prohibited, see section 48-235.

17-213.01 Village engineer; powers and duties.

(1) The village engineer, when ordered to do so by the village board of trustees, shall make surveys, estimates, and calculations necessary to be made for the establishment and maintenance of public works by the village.

(2) The village board of trustees may, in lieu of appointing a village engineer, employ a special engineer to perform the duties that would otherwise be performed by the village engineer. Any work executed by such special engineer shall have the same validity and serve in all respects as though executed by the village engineer.

Source: Laws 2017, LB133, § 77.

17-214 Village overseer of streets; power and duties.

The village overseer of streets shall, subject to the order of the village board of trustees, have general charge, direction, and control of all works on streets, sidewalks, culverts, and bridges of the village and shall perform such other duties as the village board of trustees may direct.

Source: Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5064; C.S.1922, § 4236; C.S.1929, § 17-214; R.S.1943, § 17-214; Laws 2017, LB133, § 78.

17-215 Village; dissolution; how effected.

Any village incorporated under the laws of this state shall abolish its incorporation whenever a majority of the registered voters of the village, voting on the question of such abolishment, shall so decide in the manner provided in sections 17-215 to 17-219.03.

Source: Laws 1885, c. 17, § 1, p. 156; R.S.1913, § 5065; C.S.1922, § 4237; C.S.1929, § 17-215; R.S.1943, § 17-215; Laws 1998, LB 1346, § 2; Laws 2017, LB133, § 79.

17-216 Village; dissolution; petition or resolution; election.

(1) Whenever a petition for submission of the question of the abolishment of incorporation to the registered voters of any village, signed by not less than one-third of the registered voters of the village, is filed in the office of the county clerk or election commissioner of the county in which such village is situated, the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village as provided in this section and give notice thereof in the general notice of the election at which the question will be submitted.

(2) Whenever two-thirds of the members of the village board of trustees, by resolution following a public hearing, vote to submit the question of the abolishment of the incorporation of the village, the resolution shall be filed in the office of the county clerk or election commissioner of the county in which such village is situated and the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village as provided in this section and give notice thereof in the general notice of the election at which the question will be submitted.

(3) If a petition or resolution is filed with the county clerk or election commissioner, the county clerk or election commissioner shall cause such question to be submitted to the registered voters of the village at the next primary or general election which is scheduled to be held more than seventy days after the date upon which the petition or resolution is filed. If the petition or resolution calls for a vote on the question at a special election to be called for that purpose, the county clerk or election commissioner shall cause a special election to be called for the purpose of placing the question before the registered voters and the election shall be called not sooner than sixty days nor later than seventy days after the date of the filing of the petition or resolution. If a petition is filed at any time other than within one hundred eighty days prior to a primary or general election and the petition does not call for the question to be considered at a special election, the village board of trustees may, by majority vote, call for the county clerk or election commissioner to cause the matter to be placed upon the ballot at a special election on a date certain

specified by the board, except that such date shall not be sooner than sixty days after the date upon which the petition was filed.

(4) If the question of abolishment of incorporation is submitted to the voters and such question receives a favorable vote by a majority of those voting on the issue, the village board of trustees shall file with the Secretary of State a certified statement showing the total votes for and against such measure.

Source: Laws 1885, c. 17, § 2, p. 157; R.S.1913, § 5066; C.S.1922, § 4238; C.S.1929, § 17-216; R.S.1943, § 17-216; Laws 1973, LB 559, § 5; Laws 1998, LB 1346, § 3; Laws 2017, LB133, § 80.

17-217 Village; dissolution; election; form of ballot.

The form of the ballot for the question of the abolishment of incorporation of a village shall be, respectively, For abolishment of incorporation, and Against abolishment of incorporation, and the same shall be printed upon a separate ballot and shall be counted and canvassed in the same manner as other ballots voted at the election.

Source: Laws 1885, c. 17, § 3, p. 157; R.S.1913, § 5067; C.S.1922, § 4239; C.S.1929, § 17-217; R.S.1943, § 17-217; Laws 1973, LB 559, § 6; Laws 2017, LB133, § 81.

17-218 Village; dissolution; when effective.

(1) If a majority of the registered voters of a village voting on the question vote in favor of the abolishment of the incorporation of a village, then, from and after the effective date of the abolishment of the incorporation as determined by the county board as provided in subsection (2) of this section, the incorporation of the village shall cease and be abolished, and the area formerly encompassed within the boundaries of the village shall thereafter be governed by county commissioners as provided by law for unincorporated areas within the county. Upon such date, the terms of office of all elected and appointed officers and employees of the village shall end.

(2) Within fifty days after the date of the election at which the registered voters of the village approve the abolishment of the village's incorporation, the county board of the county within which the village is located shall, by resolution, specify the month, day, and year upon which the abolishment of the incorporation becomes effective. The effective date shall not be later than (a) six calendar months following the date of the election or (b) if there are liabilities of the village which cannot be retired except by means of a continuing property tax levy by the village, the date such liabilities can be paid, whichever is later. The county clerk shall transmit a copy of the resolution to the Secretary of State.

Source: Laws 1885, c. 17, § 4, p. 157; R.S.1913, § 5068; C.S.1922, § 4240; C.S.1929, § 17-218; R.S.1943, § 17-218; Laws 1998, LB 1346, § 4; Laws 2017, LB133, § 82.

17-219 Village; dissolution; village property, records, and funds; disposition.

Upon the effective date of the abolishment of incorporation of a village, all property and records belonging to the village shall be transferred to the county board of the county in which the village is located. All funds of the village not

otherwise disposed of shall be transferred to the county treasurer to be paid out by order of the county board as it sees fit.

Source: Laws 1885, c. 17, § 5, p. 157; R.S.1913, § 5069; C.S.1922, § 4241; C.S.1929, § 17-219; R.S.1943, § 17-219; Laws 1998, LB 1346, § 5; Laws 2017, LB133, § 83.

17-219.01 Village; dissolution; property; sale by county board; when authorized.

Notwithstanding any more general law respecting revenue, the county board in any county in this state in which the incorporation of any village has been abolished according to law shall advertise and sell all corporate property of the village for which the county itself has no use or which remains unsold or undisposed of after the expiration of six months from the effective date of the abolishment of the incorporation of such village as provided by the county board for liquidation of any liabilities of the village. After the effective date of the abolishment of the incorporation of the village, the county board shall treat all real estate listed and described in the original plat of such village upon which the owner of such real estate has failed and neglected to pay the taxes on such real estate as if such taxes were originally levied by the county and, notwithstanding any other provision of law, the taxes shall be deemed to have been levied by the county as of the date of the original levy by the village and due and owing as provided by law to the county.

Source: Laws 1935, c. 158, § 1, p. 581; C.S.Supp.,1941, § 17-227; R.S. 1943, § 17-219.01; R.S.1943, (1987), § 17-226; Laws 1998, LB 1346, § 6; Laws 2017, LB133, § 84.

17-219.02 Village; dissolution; property; sale; notice.

The county treasurer shall, before selling any property under section 17-219.01, give notice of the sale of such property in the same manner as notice is given when lands are sold under execution by the county sheriff, and the sale shall likewise be conducted in the same manner as execution sales.

Source: Laws 1935, c. 158, § 2, p. 581; C.S.Supp.,1941, § 17-228; R.S. 1943, § 17-219.02; R.S.1943, (1987), § 17-227; Laws 1998, LB 1346, § 7; Laws 2017, LB133, § 85.

17-219.03 Village; dissolution; board of trustees; county board; duties.

(1) On and after the date of a vote by a majority of the registered voters of a village voting on the question in favor of the abolishment of the incorporation of a village, the village board of trustees shall not expend any funds of the village, liquidate any village assets, whether such assets are real or personal property, or otherwise encumber or exercise any authority over the property or funds of the village without the prior approval of the county board of the county within which the village is located.

(2) Within ten days after a vote by a majority of the registered voters of a village voting on the question in favor of the abolishment of the incorporation of a village, the village board of trustees shall meet and approve a resolution setting out with particularity all of the assets and liabilities of the village, including a full and complete inventory of all property, real and personal, owned by the village. The resolution shall be transmitted to the county clerk of

the county within which the village is located, and the county clerk shall provide copies to the members of the county board.

(3) If the liabilities of the village exceed the value of all the assets of the village, the county board shall, within twenty days after the receipt of the resolution by the county clerk, schedule a joint meeting between the village board of trustees and the county board to review the resolution and discuss how to liquidate the liabilities with the village board of trustees.

(4) Within thirty days after the date upon which the joint meeting is held pursuant to subsection (3) of this section, the county board shall adopt a plan for the liquidation of village assets to retire the liabilities of the village.

Source: Laws 1935, c. 158, § 3, p. 581; C.S.Supp.,1941, § 17-229; R.S. 1943, § 17-219.03; R.S.1943, (1987), § 17-228; Laws 1998, LB 1346, § 8; Laws 2017, LB133, § 86.

17-220 Village situated in more than one county; how organized.

A majority of the inhabitants of any village situated in two or more counties may present a petition to the county board of any county in which any part of such village is situated, requesting that they may be incorporated as a village; and such county board shall act upon the petition the same as if the village were situated wholly within the county where the petition was presented. If the county board shall declare such village incorporated, the village shall thereafter be governed by the provisions of the statutes of this state applicable to the government of villages. The county clerk of such county shall immediately certify the proceedings relating to the incorporation of such village to the county board of each other county in which any part of such village is situated, and each county board to which such proceedings shall be certified shall enter such proceedings upon its records.

Source: Laws 1893, c. 9, § 1, p. 138; R.S.1913, § 5069; C.S.1922, § 4242; C.S.1929, § 17-220; R.S.1943, § 17-220; Laws 2017, LB133, § 87.

17-222 Village situated in more than one county; jails.

Any village situated in two or more counties may use the jails of any and all counties in which any part of such village is situated.

Source: Laws 1893, c. 9, § 4, p. 139; R.S.1913, § 5072; C.S.1922, § 4244; C.S.1929, § 17-222; R.S.1943, § 17-222; Laws 2017, LB133, § 88.

17-223 Village situated in more than one county; tax; how certified.

Taxes levied for village purposes, in villages situated in two or more counties, shall be certified to the county clerk of each county in which any part of such village is situated, and such county clerks shall place such certifications on the proper tax list.

Source: Laws 1893, c. 9, § 5, p. 139; R.S.1913, § 5073; C.S.1922, § 4245; C.S.1929, § 17-223; R.S.1943, § 17-223; Laws 2017, LB133, § 89.

17-224 Village situated in more than one county; legal notices; publication.

All notices and other publications, required by law to be published in any county in which any part of a village is situated, may be published in any legal newspaper in or of general circulation in such village, and such publication

shall have the same force and effect as it would have if published in every county in which any part of such village is situated.

Source: Laws 1893, c. 9, § 7, p. 140; R.S.1913, § 5074; C.S.1922, § 4246; C.S.1929, § 17-224; R.S.1943, § 17-224; Laws 2017, LB133, § 90.

17-225 Railroads; blocking crossings; penalty.

It shall be unlawful for any railroad company or for any of its officers, agents, or employees to obstruct with car or cars, with engine or engines, or with any other rolling stock, for more than ten minutes at a time, any public highway, street, or alley in any unincorporated village in the State of Nebraska. Any corporation, person, firm, or individual violating any provision of this section shall, upon conviction thereof, be fined in any sum not less than ten dollars nor more than one hundred dollars.

Source: Laws 1907, c. 109, § 1, p. 384; Laws 1907, c. 109, § 2, p. 384; R.S.1913, § 5075; C.S.1922, § 4247; C.S.1929, § 17-225; R.S. 1943, § 17-225; Laws 2017, LB133, § 91.

17-229 Street improvement program; authorization; tax levy.

If the village board of trustees determines by a three-fourths vote the necessity of initiating a street improvement program within the village, which improvements are in the nature of a general benefit to the whole community and not of special benefit to adjoining or to abutting property and which consists of graveling, base stabilization, oiling, or other improvements to the streets, but which improvements do not consist of curb and gutter or asphalt or concrete pavings, the village board of trustees may, by ordinance, provide for the levy and collection of a special tax not exceeding seventeen and five-tenths cents on each one hundred dollars on the taxable value of all the taxable property in the village for a period not to exceed five years to create a fund for the payment of such improvements.

Source: Laws 1963, c. 85, § 1, p. 293; Laws 1979, LB 187, § 46; Laws 1992, LB 719A, § 49; Laws 2017, LB133, § 92.

17-230 Street improvement program; tax levy limitation.

Any levy pursuant to section 17-229 shall not be considered within the limitation on the village for the levy of taxes as contained in section 17-702.

Source: Laws 1963, c. 85, § 2, p. 293; Laws 1965, c. 69, § 2, p. 290; Laws 1979, LB 187, § 47; Laws 2017, LB133, § 93.

17-231 Street improvement program; construction of improvements; issuance of warrants; interest; unused funds transferred to general fund.

In order to construct the improvements as outlined in section 17-229, the village board of trustees may proceed from time to time to make such improvements costing not exceeding eighty-five percent of the amount of taxes to be collected under the special tax levy. In order to allow the construction of the contemplated improvements immediately, the village board of trustees may issue warrants from time to time in the aggregate amount of eighty-five percent of the estimated taxes to be collected over the period of years provided for the levy, the amount of such warrants authorized to be issued to be based upon the amount of revenue to be raised by the tax to be levied and the taxable valuation

of the taxable property in the village at the time the determination of necessity is made by ordinance multiplied by the number of years the tax has to run. Such warrants shall not bear interest in excess of six percent per annum, may be issued in such denominations as the village board of trustees may determine, and shall be paid from the collection of the special tax levy. Any unpaid amount of the levy after the payment of any such warrants in full, including both principal and interest, shall be transferred to the general fund.

Source: Laws 1963, c. 85, § 3, p. 293; Laws 1979, LB 187, § 48; Laws 1992, LB 719A, § 50; Laws 2017, LB133, § 94.

ARTICLE 3

CHANGES IN POPULATION OR CLASS

(a) CITIES OF THE FIRST CLASS

Section

- 17-301. City of the first class; reorganization as city of the second class; procedure; mayor, city council, and Secretary of State; duties.
- 17-302. Government pending reorganization.
- 17-303. Wards; establish.
- 17-304. Reorganization; council; members; qualifications.

(b) CITIES OF THE SECOND CLASS

- 17-306. City of the second class; reorganization as village; petition; election.
- 17-306.01. Village reorganized from city of second class; discontinuation; reorganize as city of the second class; petition; election.
- 17-308. Reorganization; transfer of property; how effected.
- 17-309. Reorganization; existing ordinances; effect; debts; taxes.
- 17-310. Decrease in population; remain city of the second class.

(c) VILLAGES

- 17-311. Village; increase in population; reorganization as city of the second class.
- 17-312. Village; retention of village government; petition; election.
- 17-313. Village; organize as city of second class; petition; election.

(a) CITIES OF THE FIRST CLASS

17-301 City of the first class; reorganization as city of the second class; procedure; mayor, city council, and Secretary of State; duties.

(1) This section applies to cities of the first class whose population is less than five thousand inhabitants but more than eight hundred inhabitants as determined by the federal decennial census conducted in the year 2010 or any subsequent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(2)(a) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of the city shall certify such fact to the Secretary of State. If the mayor and city council determine that it is in the best interests of such city to become a city of the second class, the mayor and city council shall adopt an ordinance to that effect and shall notify the Secretary of State and notice and a copy of such ordinance shall accompany the certification. If the Secretary of State receives such notification, he or she shall declare such city to be a city of the second class. If the mayor and city council determine that it is in the best interests of such city to remain a city of the first class, they shall submit to the Secretary of State, within nine years

after the certification is required to be submitted pursuant to this subdivision, an explanation of the city's plan to increase the city's population.

(b) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census immediately following the census or revised certified count referred to in subdivision (a) of this subsection, the mayor of the city shall certify such fact to the Secretary of State. If the mayor and city council determine that it is in the best interests of such city to become a city of the second class, the mayor and city council shall adopt an ordinance to that effect and shall notify the Secretary of State and notice and a copy of such ordinance shall accompany the certification. If the Secretary of State receives such notification, he or she shall declare such city to be a city of the second class.

(c) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census immediately following the census or revised certified count referred to in subdivision (b) of this subsection, the mayor of the city shall certify such fact to the Secretary of State. After receipt of such certification, the Secretary of State shall declare such city to be a city of the second class.

(3) If a city of the first class has a population of less than four thousand inhabitants but more than eight hundred inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor of the city shall certify such fact to the Secretary of State. After receipt of such certification, the Secretary of State shall declare such city to be a city of the second class.

(4) Beginning on the date upon which a city becomes a city of the second class pursuant to section 17-305, such city shall be governed by the laws of this state applicable to cities of the second class.

Source: Laws 1933, c. 112, § 1, p. 452; C.S.Supp.,1941, § 17-162; R.S. 1943, § 17-301; Laws 1984, LB 1119, § 3; Laws 2002, LB 729, § 5; Laws 2010, LB919, § 1; Laws 2017, LB113, § 14; Laws 2017, LB133, § 95.

17-302 Government pending reorganization.

The government of a city shall continue, as organized at the date of the declaration of the Secretary of State under section 17-301, until the reorganization of such city under section 17-305.

Source: Laws 1933, c. 112, § 2, p. 453; C.S.Supp.,1941, § 17-163; R.S. 1943, § 17-302; Laws 2002, LB 729, § 6; Laws 2017, LB133, § 96.

17-303 Wards; establish.

The mayor and city council shall, within ninety days after the declaration of the Secretary of State under section 17-301, divide the city into not less than two nor more than six wards as may be provided by ordinance. Such wards shall contain, as nearly as practicable, an equal area and an equal number of

legal voters. The division and boundaries of such wards, as defined by ordinance, shall take effect on the first day of the first succeeding municipal year following the next general city election after such reorganization. Any city council member whose term continues, by reason of his or her prior election under the statutes governing cities of the first class, through another year or years beyond the date of the reorganization as a city of the second class shall continue to hold his or her office as city council member from the ward in which he or she is a resident as if elected for the same term under the statutes governing cities of the second class.

Source: Laws 1933, c. 112, § 3, p. 453; C.S.Supp.,1941, § 17-164; R.S. 1943, § 17-303; Laws 2002, LB 729, § 7; Laws 2017, LB133, § 97.

17-304 Reorganization; council; members; qualifications.

After the terms of members of the city council in office at the time of reorganization as a city of the second class shall have expired, the city council shall consist of not less than four nor more than twelve citizens of such city, who shall be qualified electors under the Constitution and laws of the State of Nebraska.

Source: Laws 1933, c. 112, § 4, p. 454; C.S.Supp.,1941, § 17-165; R.S. 1943, § 17-304; Laws 1973, LB 559, § 7; Laws 2017, LB133, § 98.

(b) CITIES OF THE SECOND CLASS

17-306 City of the second class; reorganization as village; petition; election.

(1) The registered voters of a city of the second class may vote to discontinue organization as a city of the second class and organize as a village. The issue may be placed before the voters by a resolution adopted by the city council or by petition signed by one-fourth of the registered voters of such city.

(2) The petitions shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The city council shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the city at the last statewide general election. The election commissioner or county clerk shall notify the city council within thirty days after receiving the petitions from the city council whether the required number of signatures has been gathered. The city shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the city council determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the city council, the city council shall submit the question to the voters of whether to discontinue organization as a city of the second class and organize as a village at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the city of the second class. The form of ballot shall be For organization as a village, and Against organization as a village, and at the same election the voters shall vote for five trustees for the village. If a majority of the votes cast are For

organization as a village, then such city shall within sixty days after such election become a village and be governed under the laws of this state applicable to a village unless at some future election such village votes to reorganize as a city of the second class in the manner provided in section 17-306.01.

Source: Laws 1879, § 53, p. 205; Laws 1909, c. 21, § 1, p. 189; R.S.1913, § 5077; C.S.1922, § 4249; C.S.1929, § 17-301; R.S.1943, § 17-306; Laws 1972, LB 661, § 3; Laws 2014, LB702, § 3.

17-306.01 Village reorganized from city of second class; discontinuation; reorganize as city of the second class; petition; election.

(1) The registered voters of a village which was reorganized under section 17-306 from a city of the second class to a village may vote to discontinue organization as a village and reorganize as a city of the second class under this section if the population exceeds eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census. The issue may be placed before the voters by a resolution adopted by the village board of trustees or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions under subsection (1) of this section shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The village board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the village board of trustees within thirty days after receiving the petitions from the village board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the village board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the village board of trustees, the village board of trustees shall submit the question to the voters of whether to organize as a city of the second class at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For reorganization of the Village of as a city of the second class and Against reorganization of the Village of as a city of the second class.

(4) If the majority of the votes cast are for reorganization as a city of the second class, the village board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such village to have become a city of the second class. After such proclamation, such village shall become a city of the second class and such city shall be governed under the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(5) Upon such proclamation, the village board of trustees shall call a special election for the purpose of electing new members of the city council to be held

not more than eight months after the proclamation is issued. At the initial election of the mayor and city council members, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates for city council in each precinct or ward or at-large candidates, as the case may be, receiving the greatest number of votes at the general election, shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. Thereafter all members of the city council shall be nominated at the statewide primary election and elected at the statewide general election for four-year terms as provided in section 32-533. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office.

(6) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (4) of this section.

Source: Laws 2014, LB702, § 4; Laws 2017, LB113, § 15; Laws 2017, LB133, § 99.

17-308 Reorganization; transfer of property; how effected.

If a city of the second class reorganizes as a village pursuant to section 17-306, the village board of trustees shall, at the expiration of sixty days from such election, enter upon the duties of their offices; and all books, papers, records, money, and property of such city shall be delivered over to the village board of trustees; and the authority of the city council and all city officers shall cease from and after the taking effect of village government in such city.

Source: Laws 1879, § 54, p. 206; R.S.1913, § 5078; C.S.1922, § 4250; C.S.1929, § 17-302; R.S.1943, § 17-308; Laws 2017, LB133, § 100.

17-309 Reorganization; existing ordinances; effect; debts; taxes.

Upon reorganization of a city of the second class as a village pursuant to section 17-306, all ordinances of the city shall remain and be in full force in the village until amended or repealed by the village board of trustees, and the village board of trustees shall provide for the payment of indebtedness of the city and levy necessary taxes for such indebtedness as if the indebtedness had been incurred by the village.

Source: Laws 1879, § 55, p. 206; R.S.1913, § 5079; C.S.1922, § 4251; C.S.1929, § 17-303; R.S.1943, § 17-309; Laws 2017, LB133, § 101.

17-310 Decrease in population; remain city of the second class.

Whenever any city of the second class decreases in population until it has a population of less than eight hundred inhabitants and more than one hundred inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the mayor and city council may decide by ordinance to remain a city of the

second class. If the mayor and city council enact such an ordinance, the mayor shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such city to remain a city of the second class. Such city shall continue to be governed by laws of this state applicable to cities of the second class.

Source: Laws 1984, LB 1119, § 5; Laws 2017, LB113, § 16; Laws 2017, LB133, § 102.

(c) VILLAGES

17-311 Village; increase in population; reorganization as city of the second class.

(1) Except as provided in section 17-312, whenever any village increases in population until it has a population of more than eight hundred inhabitants but less than five thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the village board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such village to have become a city of the second class. After such proclamation, such city shall be governed by the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(2) If any village becomes a city of the second class, the village board of trustees shall call a special election for the purpose of electing the mayor and city council members to be held not more than eight months after the proclamation is issued. At the initial election of the mayor and city council members, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates for city council in each precinct or ward or at-large candidates, as the case may be, receiving the greatest number of votes at the general election, shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office.

(3) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (1) of this section.

Source: Laws 1984, LB 1119, § 6; Laws 1988, LB 796, § 2; Laws 1994, LB 76, § 495; Laws 2017, LB113, § 17; Laws 2017, LB133, § 103.

17-312 Village; retention of village government; petition; election.

(1) Whenever any village attains a population exceeding eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census,

the registered voters of the village may vote to retain a village form of government. The issue may be placed before the voters by a resolution adopted by the village board of trustees or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions under subsection (1) of this section shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The village board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the village board of trustees within thirty days after receiving the petitions from the village board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the village board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the village board of trustees, the village board of trustees shall submit the question to the voters of whether to retain the village form of government at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For retention of village government and Against retention of village government. If the majority of the votes cast are for retention of village government, then such village shall remain a village and be governed under the laws of this state applicable to villages unless at some future election such village votes to reorganize as a city of the second class in the manner provided in section 17-313.

(4) If the question to retain a village form of government is submitted at a special election, such election shall be held not later than October 15 of an odd-numbered year. If the question is rejected, city of the second class officials shall be elected at the next regularly scheduled election.

(5) If the question to retain a village form of government is submitted at a regularly scheduled election, no village trustees shall be elected at such election, but village trustees whose terms are to expire following such election shall hold office until either their successors or a mayor and city council members take office as follows:

(a) If the question is rejected, the village board of trustees shall call a special election, to be held not more than eight months after the election at which the question was rejected, for the purpose of electing a mayor and city council members under the provisions of law relating to cities of the second class. The terms of office for such officials shall be established pursuant to section 17-311. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office; and

(b) If the question is approved, the village board of trustees shall call a special election, to be held not more than eight months after the election at which the question was approved, for the purpose of electing successors to those members of the village board of trustees who held office beyond the normal expiration of their terms. Such special election shall be conducted under the provisions of law relating to villages. Persons so elected shall take

office as soon after the completion of the canvass of the votes as is practicable, and their terms of office shall be as if the holdovers had not occurred.

Source: Laws 1909, c. 21, § 1, p. 190; R.S.1913, § 5007; C.S.1922, § 4249; C.S.1929, § 17-301; R.S.1943, § 17-307; Laws 1969, c. 91, § 2, p. 455; Laws 1971, LB 62, § 3; Laws 1972, LB 661, § 4; Laws 1988, LB 796, § 1; R.S.Supp.,1990, § 17-307; Laws 1994, LB 76, § 496; Laws 2014, LB702, § 5; Laws 2017, LB113, § 18; Laws 2017, LB133, § 104.

17-313 Village; organize as city of second class; petition; election.

(1) The registered voters of a village may vote to discontinue organization as a village and organize as a city of the second class under this section if the population of the village exceeds eight hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and the prior vote pursuant to section 17-312 was in favor of retaining the village form of government. The issue may be placed before the voters by a resolution adopted by the village board of trustees or by petition signed by one-fourth of the registered voters of the village.

(2) The petitions under subsection (1) of this section shall conform to section 32-628. The Secretary of State shall design the form to be used for the petitions. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The village board of trustees shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be one-fourth of the number of voters registered in the village at the last statewide general election. The election commissioner or county clerk shall notify the village board of trustees within thirty days after receiving the petitions from the village board of trustees whether the required number of signatures has been gathered. The village shall reimburse the county for any costs incurred by the election commissioner or county clerk.

(3) If the village board of trustees determines that the petitions are in proper form and signed by the necessary number of registered voters or after adoption of the resolution by the village board of trustees, the village board of trustees shall submit the question to the voters of whether to organize as a city of the second class at a special election pursuant to section 32-559 or at the same time as a local or statewide primary or general election held in the village. The form of the ballot at such election shall be For reorganization of the Village of as a city of the second class and Against reorganization of the Village of as a city of the second class.

(4) If the majority of the votes cast are for reorganization as a city of the second class, the village board of trustees shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation declare such village to have become a city of the second class. After such proclamation, such village is a city of the second class, and such city shall be governed under the laws of this state applicable to cities of the second class. The government of such city shall continue as organized at the date of such proclamation until the reorganization as a city of the second class.

(5) Upon such proclamation, the village board of trustees shall call a special election for the purpose of electing a mayor and city council members to be

held not more than eight months after the proclamation is issued. At the initial election of the mayor and city council members, the names of the candidates receiving the greatest number of votes at the primary election if one is held shall be placed on the general election ballot. One-half or the bare majority of the candidates for city council in each precinct or ward or at-large candidates receiving the greatest number of votes at the general election shall be elected to terms of the longest duration, and those receiving the next greatest number of votes shall be elected to the remaining term or terms. Thereafter all members of the city council shall be nominated at the statewide primary election and elected at the statewide general election for four-year terms as provided in section 32-533. The members of the village board of trustees shall hold office only until the newly elected mayor and city council members assume office.

(6) All ordinances, bylaws, acts, rules, regulations, obligations, and proclamations existing and in force in or with respect to any village at the time of its incorporation as a city of the second class shall remain in full force and effect after such incorporation as a city of the second class until repealed or modified by such city within one year after the date of the filing of the certificate pursuant to subsection (4) of this section.

Source: Laws 2014, LB702, § 6; Laws 2017, LB113, § 19; Laws 2017, LB133, § 105.

ARTICLE 4

CHANGE OF BOUNDARY; ADDITIONS

(a) CONSOLIDATION

- Section
- 17-401. Consolidation; authority.
- 17-402. Consolidation; procedure.
- 17-403. Consolidation; when effective; existing rights and liabilities preserved.
- 17-404. Consolidation; property.

(b) ANNEXATION OF TERRITORY

- 17-405. Transferred to section 18-3301.
- 17-405.01. Annexation; powers; restrictions.
- 17-405.02. Contiguous land, defined.
- 17-405.03. Laws, codes, rules, or regulations; effect of annexation.
- 17-405.04. Inhabitants of annexed land; benefits; ordinances.
- 17-405.05. City or village in two or more counties; annexation by city or village; procedure.
- 17-406. Transferred to section 18-3302.
- 17-407. Annexation by city or village within county between 100,000 and 250,000 inhabitants; mayor and city council or chairperson and village board of trustees; powers; notice; contents; liability; limitation on action.
- 17-412. Transferred to section 18-3303.

(c) DETACHMENT OF TERRITORY WITHIN CITY LIMITS

- 17-414. Land within corporate limits; disconnection; procedure.

(d) PLATTING

- 17-415. Transferred to section 18-3304.
- 17-416. Transferred to section 18-3305.
- 17-417. Transferred to section 18-3306.
- 17-418. Transferred to section 18-3307.
- 17-419. Transferred to section 18-3308.
- 17-420. Transferred to section 18-3309.
- 17-421. Transferred to section 18-3310.
- 17-422. Transferred to section 18-3311.

Section

- 17-423. Transferred to section 18-3312.
 17-424. Transferred to section 18-3313.
 17-425. Transferred to section 18-3314.
 17-426. Transferred to section 18-3315.

(a) CONSOLIDATION

17-401 Consolidation; authority.

Any two or more cities of the second class or villages, lying adjacent to each other, may consolidate and become one city or village, as the case may be, and under the name and with all the powers, obligations, and duties of the city or village whose name shall be assumed and adopted in the proceedings provided in sections 17-402 and 17-403.

Source: Laws 1879, § 91, p. 228; R.S.1913, § 5082; C.S.1922, § 4254; C.S.1929, § 17-403; R.S.1943, § 17-401; Laws 2017, LB133, § 106.

17-402 Consolidation; procedure.

When any city or village shall desire to be annexed to another contiguous city or village, the city council or village board of trustees of each city or village shall appoint three commissioners to arrange and report to such city council or village board of trustees respectively the terms and conditions on which the proposed annexation can be made. If the city council or village board of trustees of each such city or village approves of the terms and conditions of such proposed annexation by ordinance, the city council or village board of trustees of each of such cities or villages shall submit the question of such annexation, upon the terms and conditions so proposed, to the electors of the respective cities or villages. If a majority of the electors of each such city or village vote in favor of such annexation, the city council or village board of trustees of each shall, by ordinance, declare such annexation. A certified copy of the whole proceedings of the city or village shall be filed with the city clerk or village clerk to which the annexation is made.

Source: Laws 1879, § 92, p. 228; R.S.1913, § 5083; C.S.1922, § 4255; C.S.1929, § 17-404; R.S.1943, § 17-402; Laws 2017, LB133, § 107.

17-403 Consolidation; when effective; existing rights and liabilities preserved.

When certified copies of the proceedings for annexation are filed, as contemplated in section 17-402, the annexation shall be deemed complete; and the city or village to which annexation is made shall have the power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation. After such annexation, the annexed city or village shall be governed as part of the city or village to which annexation is made. Such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or villages, but they may be enforced as if no such annexation had taken place.

Source: Laws 1879, § 93, p. 228; R.S.1913, § 5084; C.S.1922, § 4256; C.S.1929, § 17-405; R.S.1943, § 17-403; Laws 2017, LB133, § 108.

17-404 Consolidation; property.

When a city or village is annexed to another pursuant to section 17-402, the property, both real and personal, notes, bonds, obligations, accounts, demands, evidences of debt, rights, choses in action, franchises, books, records, maps, plats, and effects of every nature, of and belonging to the city or village so annexed, shall be the property of and belong to the city or village to which it is annexed.

Source: Laws 1879, § 94, p. 229; R.S.1913, § 5085; C.S.1922, § 4257; C.S.1929, § 17-406; R.S.1943, § 17-404; Laws 2017, LB133, § 109.

(b) ANNEXATION OF TERRITORY**17-405 Transferred to section 18-3301.****17-405.01 Annexation; powers; restrictions.**

(1) Except as provided in subsection (2) of this section and section 17-407, the mayor and city council of any city of the second class or the chairperson and members of the village board of trustees may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time, include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character, and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any city of the second class or village over any agricultural lands which are rural in character.

(2) The mayor and city council of any city of the second class or the chairperson and members of the village board of trustees may, by ordinance, annex any lands, lots, tracts, streets, or highways which constitute a redevelopment project area so designated by the city or village or its community redevelopment authority in accordance with the provisions of the Community Development Law when such annexation is for the purpose of implementing a lawfully adopted redevelopment plan containing a provision dividing ad valorem taxes as provided in subsection (1) of section 18-2147 and which will involve the construction or development of an agricultural processing facility, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law relating to annexation generally for cities of the second class and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by statute to extend its extraterritorial zoning jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising zoning jurisdiction over the area surrounding the annexed redevelopment project area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the city or village lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the city or village, such noncontiguous area shall, solely for the purposes of

section 70-1008, be treated as if it had been annexed by the city or village on the date upon which the connecting intervening territory had been formally annexed.

(3) For purposes of subsection (2) of this section, agricultural processing facility means a plant or establishment where value is added to agricultural commodities through processing, fabrication, or other means and where eighty percent or more of the direct sales from the facility are to other than the ultimate consumer of the processed commodities. A facility shall not qualify as an agricultural processing facility unless its construction or development involves the investment of more than one million dollars derived from nongovernmental sources.

Source: Laws 1967, c. 74, § 1, p. 240; Laws 1997, LB 875, § 1; Laws 2009, LB495, § 6; Laws 2017, LB133, § 110; Laws 2018, LB874, § 3.

Effective date July 19, 2018.

Cross References

Community Development Law, see section 18-2101.

17-405.02 Contiguous land, defined.

For purposes of section 17-405.01, lands, lots, tracts, streets, or highways shall be deemed contiguous although a stream, roadway, embankment, strip, or parcel of land not more than five hundred feet wide lies between such lands, lots, tracts, streets, or highways and the corporate limits of a city of the second class or village.

Source: Laws 1967, c. 74, § 2, p. 241; Laws 1971, LB 890, § 1; Laws 2017, LB133, § 111.

17-405.03 Laws, codes, rules, or regulations; effect of annexation.

Any extraterritorial zoning regulations, property use regulations, or other laws, codes, rules, or regulations imposed upon any annexed lands by the city of the second class or village before such annexation shall continue in full force and effect until otherwise changed.

Source: Laws 1967, c. 74, § 3, p. 241; Laws 2017, LB133, § 112.

17-405.04 Inhabitants of annexed land; benefits; ordinances.

The inhabitants of territories annexed under sections 17-405.01 to 17-405.05 shall receive substantially the benefits of other inhabitants of such city of the second class or village as soon as practicable, and adequate plans and necessary city council or village board of trustees action to furnish such benefits as police, fire, snow removal, and water service must be adopted not later than one year after the date of annexation, and such inhabitants shall be subject to the ordinances and regulations of such city or village, except that such one-year period shall be tolled pending final court decision in any court action to contest such annexation.

Source: Laws 1967, c. 74, § 4, p. 241; Laws 2017, LB133, § 113.

17-405.05 City or village in two or more counties; annexation by city or village; procedure.

When any city of the second class or village situated in two or more counties shall desire to annex to its corporate limits any contiguous territory, whether within the counties within which such city or village is situated or otherwise, such territory may be annexed in the manner provided by sections 17-405.01 to 17-405.04.

Source: Laws 1903, c. 23, § 2, p. 259; R.S.1913, § 5089; C.S.1922, § 4262; C.S.1929, § 17-411; R.S.1943, § 17-413; Laws 1967, c. 74, § 5, p. 241; R.S.1943, (1987), § 17-413; Laws 2017, LB133, § 114.

17-406 Transferred to section 18-3302.

17-407 Annexation by city or village within county between 100,000 and 250,000 inhabitants; mayor and city council or chairperson and village board of trustees; powers; notice; contents; liability; limitation on action.

(1) The provisions of this section shall govern annexation by a city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(2) The mayor and city council of any city of the second class or the chairperson and members of the village board of trustees of any village described in subsection (1) of this section may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any such municipality over any agricultural lands which are rural in character.

(3) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city or village, the city clerk or village clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or village or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city or village; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(4) Prior to the final adoption of the annexation ordinance, the minutes of the meeting of the city council or village board of trustees at which such final adoption was considered shall reflect formal compliance with subsection (3) of this section.

(5) No additional or further notice beyond that required by subsection (3) of this section shall be necessary in the event (a) that the scheduled public hearing of the city council or village board of trustees on the proposed annexation is

adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council or village board of trustees prior to formal passage of the annexation ordinance.

(6) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the second class or village either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(7) Except for a willful or deliberate failure to cause notice to be given, the city or village and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board of trustees.

(8) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council or village board of trustees.

Source: Laws 2009, LB495, § 7; Laws 2017, LB74, § 2; Laws 2017, LB133, § 115.

17-412 Transferred to section 18-3303.

(c) DETACHMENT OF TERRITORY WITHIN CITY LIMITS

17-414 Land within corporate limits; disconnection; procedure.

Whenever a majority of the legal voters residing on any territory within and adjacent to the corporate limits of any city of the second class or village or the owner or owners of any unoccupied territory so situated desire to have the territory disconnected from such city or village, they may file a petition in the district court of the county in which such city or village is situated requesting that such territory be detached. The petitioners shall, within ten days after the filing of such petition, cause a copy of such petition to be served on such city or village in the manner provided by law for the service of summons in a civil action. If the city or village by a majority vote of all members of the city council or village board of trustees consents that such territory be disconnected, the court shall enter a decree disconnecting the territory, and in such case no costs shall be taxed against such city or village. In case such a city or village desires to contest such petition, it shall file its answer to such petition within thirty days after the service of a copy of the petition and upon such filing shall be joined to the issue and the cause shall be tried by the court as a suit in equity. If the court finds in favor of the petitioners and that justice and equity require that such territory, or any part thereof, be disconnected from such city or village, it shall enter a decree accordingly. In all cases such a decree disconnecting part or all of such territory shall particularly describe the territory

affected and a certified copy of such decree shall be recorded in the office of the register of deeds or county clerk of the county in which such territory is situated. A certified copy of such decree shall also be forwarded to and filed in the office of the affected city clerk or village clerk. Either party may prosecute an appeal from the finding and decree of the district court to the Court of Appeals.

Source: Laws 1879, § 101, p. 232; Laws 1881, c. 23, § 12, p. 192; Laws 1901, c. 20, § 1, p. 320; R.S.1913, § 5090; C.S.1922, § 4263; C.S.1929, § 17-412; R.S.1943, § 17-414; Laws 1945, c. 27, § 1, p. 138; Laws 1991, LB 732, § 20; Laws 2017, LB133, § 116.

(d) PLATTING

17-415 Transferred to section 18-3304.

17-416 Transferred to section 18-3305.

17-417 Transferred to section 18-3306.

17-418 Transferred to section 18-3307.

17-419 Transferred to section 18-3308.

17-420 Transferred to section 18-3309.

17-421 Transferred to section 18-3310.

17-422 Transferred to section 18-3311.

17-423 Transferred to section 18-3312.

17-424 Transferred to section 18-3313.

17-425 Transferred to section 18-3314.

17-426 Transferred to section 18-3315.

ARTICLE 5

GENERAL GRANT OF POWER

Section	
17-501.	Cities of the second class and villages; powers; board of public trust; members; duties.
17-502.	Seal; other powers.
17-503.	Real property; sale; exception; procedure; remonstrance petition; procedure; hearing.
17-503.02.	Personal property; sale; procedure; other conveyance.
17-504.	Corporate name; process; service.
17-505.	Ordinances, rules, and regulations; enactment; enforcement.
17-505.01.	Notice; publication.
17-507.	Other taxes; power to levy.
17-508.	Streets; grading and repair, when; bridges and sewers; construction.
17-508.02.	Streets; grading and repair; bridges and sewers; tax limits.
17-509.	Streets and malls; power to improve; districts.
17-510.	Streets; improvement district; creation by petition; denial; special assessments.
17-511.	Streets; improvement by ordinance; objections; time of filing; special assessment.

CITIES OF THE SECOND CLASS AND VILLAGES

- Section
- 17-512. Streets; main thoroughfares; improvement by ordinance; assessments.
- 17-513. Streets; improvement; petitions and protests; sufficiency; how determined; appeal.
- 17-514. Streets; improvement; assessments; certification to county treasurer.
- 17-515. Streets and malls; improvement; assessments; interest; when delinquent; payment in installments.
- 17-516. Streets and malls; improvement; paving bonds; warrants; interest; terms.
- 17-518. Streets; improvement; sinking fund; investment.
- 17-519. Streets; improvement; assessments against public lands; payment.
- 17-520. Streets; improvement; intersections; property; assessment; Intersection Paving Bonds; warrants; interest; partial payments; final payments.
- 17-521. Streets; improvement; railways; duty to pave.
- 17-522. Sidewalks; repair; cost; assessment; notice.
- 17-523. Sidewalks; temporary walks; construction; cost.
- 17-524. Streets and sidewalks; improvements; assessments; how made; collection.
- 17-525. Occupation tax; power to levy; exceptions.
- 17-526. Dogs and other animals; license tax; enforcement.
- 17-527. Elections; rules governing; power to prescribe.
- 17-528. Electricity; franchises and contracts; tax; sale by public service company to city.
- 17-528.02. Gas franchises; length; conditions; tax.
- 17-528.03. Electricity franchises; length; conditions; election, when required; exceptions.
- 17-529. Watercourses; aqueducts; wells; regulation.
- 17-529.01. Dikes; erection and maintenance; eminent domain; procedure.
- 17-529.02. Flood control projects; cooperation with United States; consent to requirements.
- 17-529.03. Flood control projects; removal to another site; definitions.
- 17-529.05. Flood control projects; removal to another site; petition; contents; order for hearing; notice.
- 17-529.06. Flood control projects; removal to another site; hearing; entry of order.
- 17-529.07. Flood control projects; removal to another site; order; effect.
- 17-529.08. Flood control projects; bonds; interest; election; tax; levy.
- 17-530. Waterworks; franchises; terms.
- 17-531. Waterworks; acquisition or construction authorized.
- 17-532. Waterworks; private companies; compulsory connections.
- 17-533. Waterworks; construction; bids.
- 17-534. Waterworks; purchase or construction; bonds; interest; limitation; tax; approval of electors required; exception.
- 17-535. Waterworks; construction and maintenance; acquisition of land beyond extraterritorial zoning jurisdiction; procedure.
- 17-536. Waterworks; water supply; pollution; power to prevent.
- 17-537. Waterworks; rules and regulations.
- 17-538. Waterworks; use of water; rates or rental; collection.
- 17-539. Waterworks; construction; cost; special assessments.
- 17-540. Waterworks; income; how used; surplus, investment.
- 17-541. Waterworks; water commissioner; appointment; term; bond or insurance; removal; public works commissioner, when.
- 17-542. Waterworks; rates; regulation.
- 17-543. Waterworks; water commissioner; duty to account; report; salary; public works commissioner; duties.
- 17-545. Waterworks; additional tax; when authorized.
- 17-546. Waterworks; additional tax; provision cumulative.
- 17-547. Animals running at large; regulation.
- 17-548. Pounds; establishment.
- 17-549. Fire prevention; regulations.
- 17-550. Buildings; construction; regulation.
- 17-551. Railways; depots; regulation.
- 17-552. Railways; crossings; safety regulations.
- 17-554. Fuel and feed; inspection and weighing.

- Section
- 17-555. Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.
- 17-556. Public safety; firearms; explosives; riots; regulation.
- 17-557. Streets; safety regulations; removal of snow, ice, and other encroachments.
- 17-557.01. Sidewalks; removal of encroachments; cost of removal; special assessments; interest.
- 17-558. Streets; improving; vacating; abutting property; how treated.
- 17-559. Streets; offstreet parking; markets; public utilities; establishment; eminent domain; procedure.
- 17-560. Borrowing power; pledges.
- 17-561. Railway tracks; lighting, city may require; cost; assessment.
- 17-563. Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; violation; penalty; civil action.
- 17-564. Fines; actions to recover.
- 17-565. Fines; action to recover; limitation.
- 17-566. County jail; use by city; compensation.
- 17-567. Highways, streets, bridges; maintenance and control.
- 17-568. Employment of special engineer.
- 17-568.01. City engineer or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board of trustees; powers and duties; public emergency.
- 17-568.02. Municipal bidding procedure; waiver; when.
- 17-569. Abandoned real estate; sale; ordinance.
- 17-570. Abandoned real estate; sale; notice.
- 17-571. Abandoned real estate; sale; sealed bids; deed.
- 17-572. Loans to students; conditions.
- 17-573. Litter; removal; notice; action by city or village.
- 17-574. Sewerage and drainage; districts; regulation.
- 17-575. Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.

17-501 Cities of the second class and villages; powers; board of public trust; members; duties.

Cities of the second class and villages shall be bodies corporate and politic and shall have power (1) to sue and be sued; (2) to contract or be contracted with; (3) to acquire and hold real and personal property within or without the limits of the city or village, for the use of the city or village, convey property, real or personal, and lease, lease with option to buy, or acquire by gift or devise real or personal property; and (4) to receive and safeguard donations in trust and may, by ordinance, supervise and regulate such property and the principal and income constituting the foundation or community trust property in conformity with the instrument or instruments creating such trust. The city council of any city of the second class or the village board of trustees may elect a board of five members, to be known as a board of public trust, who shall be residents of such city or village and whose duties shall be defined by ordinance and who shall have control and management of such donations in trust, in conformity with such ordinance. At the time of the establishment of the board of public trust, one member shall be elected for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, and thereafter one member shall be elected each year for a term of five years. Vacancies in the membership of the board of public trust shall be filled in like manner as regular members of the board of public trust are elected.

Source: Laws 1879, § 56, p. 206; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c.

29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 6, p. 75; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 152; R.S.1943, § 17-501; Laws 1971, LB 32, § 3; Laws 2005, LB 626, § 3; Laws 2017, LB133, § 117.

17-502 Seal; other powers.

Each city of the second class or village shall have a common seal, which it may change and alter at pleasure, and such other powers as may be conferred by law.

Source: Laws 1879, § 56, p. 207; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c. 29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 6, p. 75; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 153; R.S.1943, § 17-502; Laws 2017, LB133, § 118.

17-503 Real property; sale; exception; procedure; remonstrance petition; procedure; hearing.

(1) Except as provided in section 17-503.01, the power of any city of the second class or village to convey any real property owned by it, including land used for park purposes and public squares, except real property used in the operation of public utilities, shall be exercised by resolution directing the sale of such real property.

(2) After the passage of the resolution directing the sale, notice of all proposed sales of property described in subsection (1) of this section and the terms of such sales shall be published once each week for three consecutive weeks in a legal newspaper in or of general circulation in such city or village.

(3) If within thirty days after the third publication of the notice a remonstrance petition against such sale is signed by registered voters of the city or village equal in number to thirty percent of the registered voters of the city or village voting at the last regular municipal election held in such city or village and is filed with the governing body of such city or village, such property shall not then, nor within one year thereafter, be sold. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. Upon the receipt of the petition, the governing body of such city or village, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the petition. The governing body of such city or village shall deliver the petition to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the petition, the election commissioner or county clerk shall issue to the governing body a written receipt that the petition is in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall compare the signature of each person signing the petition with the voter registration records to determine if each signer was a registered voter on or before the date on which the petition was filed with the governing body. The election commissioner or county clerk shall also compare the signer's printed name, street and number or voting precinct,

and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The signature and address shall be presumed to be valid only if the election commissioner or county clerk determines that the printed name, street and number or voting precinct, and city, village, or post office address matches the registration records and that the registration was received on or before the date on which the petition was filed with the governing body. The determinations of the election commissioner or county clerk may be rebutted by any credible evidence which the governing body finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of the petition, the sufficiency of the petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. Upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the signature page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall certify to the governing body the number of valid signatures necessary to constitute a valid petition. The election commissioner or county clerk shall deliver the petition and the certifications to the governing body within forty days after the receipt of the petition from the governing body. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Not more than twenty signatures on one signature page shall be counted.

The governing body shall, within thirty days after the receipt of the petition and certifications from the election commissioner or county clerk, hold a public hearing to review the petition and certifications and receive testimony regarding them. The governing body shall, following the hearing, vote on whether or not the petition is valid and shall uphold the petition if sufficient valid signatures have been received.

(4) Real property now owned or hereafter owned by a city of the second class or a village may be conveyed without consideration to the State of Nebraska for state armory sites or, if acquired for state armory sites, shall be conveyed strictly in accordance with the conditions of sections 18-1001 to 18-1006.

(5) Following (a) passage of the resolution directing a sale, (b) publishing of the notice of the proposed sale, and (c) passing of the thirty-day right-of-remonstrance period, the property shall then be sold. Such sale shall be confirmed by passage of an ordinance stating the name of the purchaser and terms of the sale.

(6) Notwithstanding the procedures in subsections (1) through (5) of this section, real property owned by a city of the second class or a village may be conveyed when such property:

- (a) Is sold in compliance with the requirements of federal or state grants or programs;
- (b) Is conveyed to another public agency; or
- (c) Consists of streets and alleys.

Source: Laws 1879, § 56, p. 207; R.S.1913, § 5080; Laws 1917, c. 100, § 1, p. 264; C.S.1922, § 4252; C.S.1929, § 17-401; Laws 1933, c. 29, § 1, p. 206; Laws 1935, Spec. Sess., c. 10, § 8, p. 76; Laws 1937, c. 30, § 1, p. 153; Laws 1941, c. 25, § 1, p. 120; Laws 1941, c. 130, § 14, p. 498; C.S.Supp.,1941, § 17-401; Laws 1943, c. 34, § 1, p. 153; R.S.1943, § 17-503; Laws 1957, c. 30, § 1, p. 190; Laws 1957, c. 31, § 1, p. 193; Laws 1971, LB 399, § 1; Laws 1981, LB 33, § 1; Laws 1982, LB 909, § 4; Laws 1988, LB 793, § 5; Laws 1993, LB 59, § 2; Laws 1997, LB 230, § 2; Laws 2003, LB 476, § 1; Laws 2017, LB133, § 119; Laws 2017, LB315, § 1.

17-503.02 Personal property; sale; procedure; other conveyance.

(1) The power of any city of the second class or village to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city or village for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than five thousand dollars, notice of the sale shall also be published once in a legal newspaper in or of general circulation in such city or village at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale.

(2) Personal property may be conveyed notwithstanding the procedure in subsection (1) of this section when (a) such property is being sold in compliance with the requirements of federal or state grants or programs or (b) such property is being conveyed to another public agency.

Source: Laws 2003, LB 476, § 3; Laws 2007, LB28, § 1; Laws 2017, LB133, § 120.

17-504 Corporate name; process; service.

The corporate name of each city of the second class or village shall be the City (or Village) of, and all and every process and notice whatever affecting such city or village shall be served in the manner provided for service of a summons in a civil action.

Source: Laws 1879, § 57, p. 207; R.S.1913, § 5081; C.S.1922, § 4253; C.S.1929, § 17-402; R.S.1943, § 17-504; Laws 1983, LB 447, § 6; Laws 2017, LB133, § 121.

17-505 Ordinances, rules, and regulations; enactment; enforcement.

In addition to those special powers specifically granted by law, cities of the second class and villages shall have the power to make all such ordinances, bylaws, rules, regulations, and resolutions, not inconsistent with the laws of the state, as may be expedient for maintaining the peace, good government, and welfare of the city or village and its trade and commerce and to enforce all

ordinances by inflicting fines or penalties for the breach of such ordinances, not exceeding five hundred dollars for any one offense, recoverable with costs.

Source: Laws 1879, § 69, XII, p. 213; Laws 1881, c. 23, § 8, XII, p. 175; Laws 1885, c. 20, § 1, XII, p. 166; Laws 1887, c. 12, § 1, XII, p. 294; R.S.1913, § 5106; C.S.1922, § 4279; C.S.1929, § 17-428; R.S.1943, § 17-505; Laws 1999, LB 128, § 2; Laws 2017, LB133, § 122.

17-505.01 Notice; publication.

If a city of the second class or village is required to publish a notice or advertisement in a legal newspaper in or of general circulation in the city or village, and if there is no legal newspaper in or of general circulation in such city or village, then the city or village shall publish such notice or advertisement in a legal newspaper in or of general circulation in the county in which such city or village is located. If there is no legal newspaper in or of general circulation in such county, then the city or village shall publish such notice or advertisement by posting a written or printed copy thereof in each of three public places in the city or village for the same period of time such city or village is required to publish the notice or advertisement in a legal newspaper.

Source: Laws 2017, LB133, § 123.

17-507 Other taxes; power to levy.

Cities of the second class and villages shall have power to levy any other tax or special assessment authorized by law.

Source: Laws 1879, § 69, II, p. 211; Laws 1881, c. 23, § 8, II, p. 173; Laws 1885, c. 20, § 1, II, p. 163; Laws 1887, c. 12, § 1, II, p. 291; R.S.1913, § 5108; C.S.1922, § 4281; C.S.1929, § 17-430; R.S. 1943, § 17-507; Laws 2017, LB133, § 124.

17-508 Streets; grading and repair, when; bridges and sewers; construction.

Cities of the second class and villages shall have the power to provide for the grading and repair of any street, avenue, or alley and the construction of bridges, culverts, and sewers. No street, avenue, or alley shall be graded unless such street, avenue, or alley shall be ordered to be done by the affirmative vote of two-thirds of the city council or village board of trustees.

Source: Laws 1879, § 69, III, p. 211; Laws 1881, c. 23, § 8, III, p. 173; Laws 1885, c. 20, § 1, III, p. 163; Laws 1887, c. 12, § 1, III, p. 291; Laws 1903, c. 20, § 1, p. 248; R.S.1913, § 5109; Laws 1915, c. 91, § 1, p. 231; C.S.1922, § 4282; C.S.1929, § 17-431; R.S. 1943, § 17-508; Laws 1945, c. 28, § 1, p. 140; Laws 1945, c. 29, § 1, p. 143; Laws 1947, c. 23, § 1(1), p. 143; Laws 2017, LB133, § 125.

17-508.02 Streets; grading and repair; bridges and sewers; tax limits.

For purposes of section 17-508, cities of the second class and villages shall have power to levy in any one year not to exceed ten and five-tenths cents on

each one hundred dollars upon the taxable value of all the taxable property within the limits of such cities and villages.

Source: Laws 1879, § 69, III, p. 211; Laws 1881, c. 23, § 8, III, p. 173; Laws 1885, c. 20, § 1, III, p. 163; Laws 1887, c. 12, § 1, III, p. 291; Laws 1903, c. 20, § 1, p. 248; R.S.1913, § 5109; Laws 1915, c. 91, § 1, p. 231; C.S.1922, § 4282; C.S.1929, § 17-431; R.S. 1943, § 17-508; Laws 1945, c. 28, § 1, p. 140; Laws 1945, c. 29, § 1, p. 143; Laws 1947, c. 33, § 1(3), p. 144; Laws 1953, c. 287, § 15, p. 939; Laws 1979, LB 187, § 50; Laws 1992, LB 719A, § 52; Laws 2017, LB133, § 126.

17-509 Streets and malls; power to improve; districts.

The governing body of any city of the second class or village may grade, partially or to an established grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravell, macadamize, remacadamize, widen or narrow streets or roadways, resurface or relay existing pavement, or otherwise improve any streets, alleys, public grounds, public ways, entirely or partially, and streets which divide the city or village corporate limits and the area adjoining the city or village; construct or reconstruct pedestrian walks, plazas, malls, landscaping, outdoor sprinkler systems, fountains, decorative water ponds, lighting systems, and permanent facilities; and construct sidewalks and improve the sidewalk space. These projects may be funded at public cost or by the levy of special assessments on the property especially benefited in proportion to such benefits, except as provided in sections 19-2428 to 19-2431. The governing body may by ordinance create improvement districts, to be consecutively numbered, which may include two or more connecting or intersecting streets, alleys, or public ways, and may include two or more types of improvements authorized under this section in a single district in one proceeding. All of the improvements which are to be funded by a levy of special assessment on the property especially benefited shall be ordered as provided in sections 17-510 to 17-512, unless the governing body improves a street which divides the city or village corporate area and the area adjoining the city or village. Whenever the governing body of any city of the second class or village improves any street which divides the city or village corporate limits and the area adjoining the city or village, the governing body shall determine the sufficiency of petition as set forth in section 17-510 by the owners of the record title representing more than sixty percent of the front footage of the property directly abutting upon the street to be improved, rather than sixty percent of the resident owners. Whenever the governing body shall deem it necessary to make any of the improvements authorized under this section on a street which divides the city or village corporate limits and the area adjoining the city or village, the governing body shall by ordinance create the improvement district pursuant to section 17-511 and the right of remonstrance shall be limited to owners of record title, rather than resident owners.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 7, IV, p. 292; Laws 1903, c. 20, § 1, IV, p. 163; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 138; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 267; Laws 1919, c. 50, § 1, p. 144; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 300; Laws 1927, c. 42, § 1, p. 176; C.S.1929, § 17-432; Laws 1933, c.

136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-509; Laws 1969, c. 92, § 1, p. 456; Laws 1979, LB 136, § 3; Laws 1983, LB 94, § 2; Laws 1995, LB 196, § 2; Laws 2017, LB133, § 127.

17-510 Streets; improvement district; creation by petition; denial; special assessments.

If a petition is signed by the owners of the record title representing more than sixty percent of the front footage of property directly abutting upon the streets, alleys, public ways, or public grounds proposed to be improved in an improvement district created pursuant to section 17-509 and presented and filed with the city clerk or village clerk, the governing body of the city or village shall by ordinance create an improvement district, cause such work to be done or such improvement to be made, contract for such improvement, and levy special assessments on the lots and parcels of land abutting on or adjacent to such streets or alleys specially benefited by such improvement in such district in proportion to such benefits, except as provided in sections 19-2428 to 19-2431, to pay the cost of such improvement. The governing body may deny the formation of the proposed improvement district when the area has not previously been improved with a water system, sewer system, and grading of streets. If the governing body denies a requested improvement district formation, it shall state the grounds for such denial in a written letter to interested parties.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1887, c. 12, § 1, IV, p. 292; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 529; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-510; Laws 1979, LB 176, § 1; Laws 1983, LB 125, § 2; Laws 1983, LB 94, § 3; Laws 2015, LB361, § 29; Laws 2017, LB133, § 128.

17-511 Streets; improvement by ordinance; objections; time of filing; special assessment.

Whenever the governing body of a city of the second class or village deems it necessary to make the improvements in section 17-509 which are to be funded by a levy of special assessment on the property specially benefited, such governing body shall by ordinance create an improvement district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of any such district for six days in a legal newspaper in or of general circulation in the city or village if such legal newspaper is a daily newspaper or for two consecutive weeks if such legal newspaper is a weekly newspaper. If the owners of the record title representing more than fifty percent of the front footage of the property directly abutting on the street or alley to be improved file with the city clerk or village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If objections are not filed against the district in the time and manner prescribed in this section, the governing body shall immediately cause such work to be done or such improve-

ment to be made, shall contract for the work or improvement, and shall levy special assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited in such district in proportion to such benefits to pay the cost of such improvement.

Source: Laws 1927, c. 42, § 1, p. 177; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-511; Laws 1979, LB 176, § 2; Laws 1986, LB 960, § 8; Laws 1995, LB 196, § 3; Laws 2015, LB361, § 30; Laws 2017, LB133, § 129.

17-512 Streets; main thoroughfares; improvement by ordinance; assessments.

The city council of a city of the second class or village board of trustees may, by a three-fourths vote of all members of such city council or village board of trustees, enact an ordinance creating an improvement district, order such work to be done without petition upon any federal or state highways in the city or village or upon a street or route, designated by the mayor and city council or village board of trustees as a main thoroughfare, that connects to either a federal or state highway or a county road, and shall contract for such work, and shall levy assessments on the lots and parcels of land abutting on or adjacent to such street or alley specially benefited thereby in such district in proportion to such benefits, to pay the cost of such improvement.

Source: Laws 1879, § 69, IV, p. 211; Laws 1881, c. 23, § 8, IV, p. 173; Laws 1885, c. 20, § 1, IV, p. 163; Laws 1903, c. 20, § 1, p. 248; Laws 1909, c. 22, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-512; Laws 1972, LB 1320, § 1; Laws 2015, LB361, § 31; Laws 2017, LB133, § 130.

17-513 Streets; improvement; petitions and protests; sufficiency; how determined; appeal.

Before proceeding with any improvement under section 17-509, the sufficiency of the protests or petitions or of the existence of the required facts and conditions shall be determined by the city council or village board of trustees at a hearing of which notice shall be given to all persons who may become liable for assessments by one publication in each of two successive weeks in a legal newspaper in or of general circulation in the city or village. Appeal from the action of the city council or village board of trustees may be made to the district court of the county in which the proposed district is situated. The sufficiency of the protests or petitions referred to in sections 17-510 and 17-511, as to the ownership of the property, shall be determined by the record in the office of the county clerk or register of deeds at the time of the adoption of such ordinance. In determining the sufficiency of the petitions or objections, intersections shall be disregarded, and any lot or ground owned by the city or village shall not be counted for or against such improvement.

Source: Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 530; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-513; Laws 1963, c. 71, § 1, p. 274; Laws 2017, LB133, § 131.

17-514 Streets; improvement; assessments; certification to county treasurer.

All assessments under sections 17-509 to 17-512 shall be a lien on the property on which levied from the date of levy and shall be certified by direction of the city council or village board of trustees to the city treasurer or village treasurer for collection. Except as provided in section 18-1216, such assessment shall be due and payable to such treasurer until the first day of November thereafter, or until the delivery of the tax list for such year to the county treasurer of the county in which such city or village is situated, at and after which time such assessment shall be due and payable to such county treasurer. The city council or village board of trustees of such city or village shall, within the time provided by law, cause such assessments, or portion thereof then remaining unpaid, to be certified to the county clerk for entry upon the proper tax lists. If the city treasurer or village treasurer collects any assessment or portion of such assessment so certified while such assessment shall be payable to the county treasurer, the city treasurer or village treasurer shall certify the assessment or portion of such assessment to the county treasurer at once, and the county treasurer shall correct the record to show such payment.

Source: Laws 1909, c. 21, § 1, p. 191; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 232; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 531; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-514; Laws 1996, LB 962, § 1; Laws 2017, LB133, § 132.

17-515 Streets and malls; improvement; assessments; interest; when delinquent; payment in installments.

(1) All assessments as provided in sections 17-509 to 17-512, except for paving, repaving, construction of malls and plazas, and the landscaping and permanent facilities of such malls and plazas, graveling, or curbing and guttering, shall draw interest until such assessments become delinquent, at a rate set by the city council or village board of trustees from the date of levy, and shall become delinquent on the first day of May subsequent to the date of levy, and shall thereafter draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature.

(2) Such assessments for paving, repaving, construction of malls and plazas, and the landscaping and permanent facilities of such malls and plazas, or curbing and guttering shall become delinquent in equal annual installments over such period of years, not to exceed fifteen, as the city council or village board of trustees may determine at the time of making the levy, the first such equal installment to become delinquent in fifty days after the date of such levy.

(3) As to such assessments for graveling, one-third of the total amount assessed against each lot or parcel of land shall become delinquent in fifty days after the date of such levy; one-third in one year; and one-third in two years.

(4) Each of the installments, referred to in subsections (2) and (3) of this section, except the first, shall draw interest at a rate set by the city council or village board of trustees, from the time of the levy until such installment shall become delinquent; and after such installment becomes delinquent, interest at

the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon. Should there be three or more of such installments delinquent and unpaid on the same property, the city council or village board of trustees may by resolution declare all future installments on such delinquent property to be due on a fixed future date. All of such installments may be paid at one time on any lot or land within fifty days from the date of the levy without interest and, if so paid, such lot or land shall be exempt from any lien or charge for the levy.

Source: Laws 1909, c. 22, § 1, p. 192; Laws 1911, c. 21, § 1, p. 139; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 233; Laws 1917, c. 102, § 1, p. 268; Laws 1919, c. 50, § 1, p. 145; C.S. 1922, § 4283; Laws 1923, c. 135, § 1, p. 331; Laws 1927, c. 42, § 1, p. 178; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 531; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-515; Laws 1953, c. 34, § 1, p. 124; Laws 1959, c. 64, § 3, p. 287; Laws 1965, c. 65, § 1, p. 283; Laws 1969, c. 92, § 2, p. 457; Laws 1969, c. 51, § 43, p. 298; Laws 1976, LB 441, § 2; Laws 1980, LB 933, § 18; Laws 1981, LB 167, § 19; Laws 2017, LB133, § 133.

17-516 Streets and malls; improvement; paving bonds; warrants; interest; terms.

For the purpose of paying the cost of constructing, landscaping, and equipping malls and plazas, paving, repaving, macadamizing or graveling, curbing, guttering, or otherwise improving streets, avenues, or alleys in any improvement district, the mayor and city council of a city of the second class or village board of trustees shall have the power and may, by ordinance, cause to be issued bonds of the city or village to be called District Improvement Bonds of District No. . . . , payable in not exceeding fifteen years from date, and to bear interest payable annually or semiannually with interest coupons attached or may issue its warrants, as other warrants are issued, to be called District Improvement Warrants of District No. . . . , payable in the order of their number, to be issued in such denominations as may be deemed advisable, and to bear interest. When warrants are issued for the payment of such cost, special taxes and assessments shall be levied sufficient to pay such warrants and the interest thereon within three years from the date of issuance.

Source: Laws 1909, c. 22, § 1, p. 192; Laws 1911, c. 21, § 1, p. 140; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 233; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 332; Laws 1927, c. 42, § 1, p. 179; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 532; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-516; Laws 1963, c. 72, § 1, p. 275; Laws 1963, c. 73, § 1, p. 276; Laws 1969, c. 92, § 3, p. 458; Laws 1969, c. 51, § 44, p. 299; Laws 2017, LB133, § 134.

17-518 Streets; improvement; sinking fund; investment.

Pending final redemption of warrant or warrants or bond or bonds for paving issued under section 17-516, the city treasurer or village treasurer is authorized to invest such sinking fund in interest-bearing time certificates of deposit in depositories approved and authorized to receive county funds, but in no greater amount in any depository than such depository is authorized to receive deposits

of county funds; and the interest arising from such certificate of deposit shall be credited to its respective sinking fund as provided by law.

Source: Laws 1923, c. 135, § 1, p. 332; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 532; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-518; Laws 2017, LB133, § 135.

17-519 Streets; improvement; assessments against public lands; payment.

If in any city of the second class or village there shall be any real estate belonging to any county, school district, city, village, or other political subdivision adjacent to or abutting upon the street or other public way whereon paving, repaving, graveling, or other improvement has been ordered, it shall be the duty of the governing body of the political subdivision to provide for the payment of such special assessments or taxes as may be assessed against the real estate so adjacent or abutting or within an improvement district. In the event of the neglect or refusal so to do, the city or village may recover the amount of such special taxes or assessments in any proper action, and the judgment thus obtained may be enforced in the usual manner.

Source: Laws 1909, c. 22, § 1, p. 193; Laws 1911, c. 21, § 1, p. 140; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 333; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 533; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-519; Laws 2017, LB133, § 136.

17-520 Streets; improvement; intersections; property; assessment; Intersection Paving Bonds; warrants; interest; partial payments; final payments.

In cities of the second class and villages, for all paving and improvements of the intersections and areas formed by the crossing of streets, avenues, or alleys, and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city or village, the assessment shall be made upon all of the taxable property of such city or village; and for the payment of such paving or improvements the mayor and city council or the village board of trustees are hereby authorized to issue paving bonds of the city or village, in such denominations as they deem proper to be called Intersection Paving Bonds payable in not to exceed fifteen years from the date of such bonds, and to bear interest payable annually or semiannually. Such bonds shall not be issued until the work is completed and then not in excess of the cost of such improvements. For the purpose of making partial payments as the work progresses in paving, repaving, macadamizing or graveling, curbing, and guttering or improvements of streets, avenues, alleys, or intersections and areas formed by the crossing of streets, avenues, or alleys, or one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city or village, warrants may be issued by the mayor and city council, or the village board of trustees, upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon completion and acceptance of the work issue a final warrant for the balance of the amount due

the contractor, which warrants shall be redeemed and paid upon the sale of bonds authorized by law. The city or village shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor. Nothing in this section shall be construed as authorizing the mayor and city council or village board of trustees to pave or gravel any intersections or areas formed by the crossing of streets, avenues, or alleys unless in connection with one or more blocks of street paving or graveling of which the paving or graveling of such intersection or area shall form a part.

Source: Laws 1909, c. 22, § 1, p. 193; Laws 1911, c. 21, § 1, p. 141; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 269; Laws 1919, c. 50, § 1, p. 146; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 333; Laws 1927, c. 42, § 1, p. 180; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 533; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-520; Laws 1965, c. 65, § 2, p. 284; Laws 1969, c. 51, § 45, p. 299; Laws 1975, LB 112, § 2; Laws 2017, LB133, § 137.

17-521 Streets; improvement; railways; duty to pave.

Any street or other railway company, occupying with any track any street, avenue, or alley or portion thereof, which may be ordered paved, repaved, macadamized, or graveled, may be charged with the expense of such improvement of such portion of such street, avenue, or alley so occupied by it between its tracks, between its rails, and for one foot beyond the outer rails; and the cost of such improvement may be collected and enforced against such company in such manner as may be provided by ordinance; or the mayor and city council or village board of trustees may by ordinance require such company to pave, repave, macadamize, or gravel such portion of such street, avenue, or alley occupied by such tracks and for one foot beyond its outside rails.

Source: Laws 1909, c. 22, § 1, p. 194; Laws 1911, c. 21, § 1, p. 141; R.S.1913, § 5110; Laws 1915, c. 92, § 1, p. 234; Laws 1917, c. 102, § 1, p. 270; Laws 1919, c. 50, § 1, p. 148; C.S.1922, § 4283; Laws 1923, c. 135, § 1, p. 334; Laws 1927, c. 42, § 1, p. 181; C.S.1929, § 17-432; Laws 1933, c. 136, § 20, p. 534; C.S.Supp.,1941, § 17-432; R.S.1943, § 17-521; Laws 2017, LB133, § 138.

17-522 Sidewalks; repair; cost; assessment; notice.

(1) The mayor and city council of a city of the second class or village board of trustees may construct and repair sidewalks or cause the construction and repair of sidewalks in such manner as the mayor and city council or village board of trustees deems necessary and assess the expense of such construction or repairs on the property in front of which such construction or repairs are made, after having given notice (a) by publication in one issue of a legal newspaper in or of general circulation in such city or village and (b) by either causing a written notice to be served upon the occupant in possession of the property involved or to be posted upon such premises ten days prior to the commencement of such construction or repair. The powers conferred under

this section are in addition to those provided in sections 17-509 to 17-521 and may be exercised without creating an improvement district.

(2) If the owner of any property abutting any street or avenue or part thereof fails to construct or repair any sidewalk in front of the owner's property within the time and in the manner as directed and requested by the mayor and city council or village board of trustees, after having received due notice to do so, the mayor and city council or village board of trustees may cause the sidewalk to be constructed or repaired and may assess the cost of such construction or repairs against the property.

Source: Laws 1879, § 69, V, p. 211; Laws 1881, c. 23, § 8, V, p. 173; Laws 1885, c. 20, § 1, V, p. 163; Laws 1887, c. 12, § 1, V, p. 292; R.S.1913, § 5111; C.S.1922, § 4284; C.S.1929, § 17-433; Laws 1943, c. 31, § 1, p. 141; R.S.1943, § 17-522; Laws 1947, c. 34, § 1, p. 144; Laws 2005, LB 161, § 6; Laws 2017, LB133, § 139.

17-523 Sidewalks; temporary walks; construction; cost.

Cities of the second class and villages shall have the power to provide for the laying of temporary sidewalks, upon the natural surface of the ground, without regard to grade, on streets not permanently improved, and to provide for the assessment of the cost of such temporary sidewalks on the property in front of which such sidewalks shall be laid.

Source: Laws 1879, § 69, VI, p. 211; Laws 1881, c. 23, § 8, VI, p. 173; Laws 1885, c. 20, § 1, VI, p. 164; Laws 1887, c. 12, § 1, VI, p. 292; Laws 1905, c. 29, § 1, p. 255; R.S.1913, § 5112; C.S.1922, § 4285; C.S.1929, § 17-434; R.S.1943, § 17-523; Laws 2017, LB133, § 140.

17-524 Streets and sidewalks; improvements; assessments; how made; collection.

Assessments made under sections 17-509 to 17-523 shall be made and assessed in the following manner:

(1) Such assessment shall be made by the city council or village board of trustees at a special meeting, by a resolution, taking into account the benefits derived or injuries sustained in consequence of such improvements, and the amount charged against the same, which, with the vote, shall be recorded in the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a legal newspaper in or of general circulation in the city or village at least four weeks before the meeting is held or, in lieu of such notice, personal service may be made upon persons owning or occupying property to be assessed; and

(2) All such assessments shall be known as special assessments for improvements, shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, and shall be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other city or village taxes.

Source: Laws 1879, § 69, VII, p. 212; Laws 1881, c. 23, § 8, VII, p. 174; Laws 1885, c. 20, § 1, VII, p. 164; Laws 1887, c. 12, § 1, VII, p.

292; R.S.1913, § 5113; C.S.1922, § 4286; C.S.1929, § 17-435; R.S.1943, § 17-524; Laws 1955, c. 40, § 1, p. 155; Laws 2017, LB133, § 141.

17-525 Occupation tax; power to levy; exceptions.

Cities of the second class and villages shall have power to raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village and regulate such occupation or business by ordinance. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The occupation tax shall be imposed in the manner provided in section 18-1208, except that section 18-1208 does not apply to an occupation tax subject to section 86-704. All such taxes shall be uniform in respect to the classes upon which they are imposed. All scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and other musical entertainments given exclusively by the citizens of the city or village.

Source: Laws 1879, § 69, VIII, p. 212; Laws 1881, c. 23, § 8, VIII, p. 174; Laws 1885, c. 20, § 1, VIII, p. 165; Laws 1887, c. 12, § 1, VIII, p. 293; R.S.1913, § 5114; C.S.1922, § 4287; C.S.1929, § 17-436; R.S.1943, § 17-525; Laws 2012, LB745, § 6; Laws 2014, LB474, § 5; Laws 2017, LB133, § 142.

17-526 Dogs and other animals; license tax; enforcement.

Cities of the second class and villages may, by ordinance, impose a license tax in an amount which shall be determined by the governing body of such city of the second class or village for each dog or other animal, on the owners and harborers of dogs and other animals, and enforce such license tax by appropriate penalties, and cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals. Such municipality may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances from such animals and authorize the destruction of such animals when running at large contrary to the provisions of any ordinance.

Source: Laws 1879, § 69, X, p. 213; Laws 1881, c. 23, § 8, X, p. 175; Laws 1885, c. 20, § 1, X, p. 165; Laws 1887, c. 12, § 1, X, p. 294; Laws 1899, c. 14, § 1, p. 79; R.S.1913, § 5116; C.S.1922, § 4289; C.S.1929, § 17-438; R.S.1943, § 17-526; Laws 1959, c. 59, § 2, p. 253; Laws 1976, LB 515, § 1; Laws 1981, LB 501, § 4; Laws 1997, LB 814, § 5; Laws 2008, LB806, § 4; Laws 2017, LB133, § 143.

17-527 Elections; rules governing; power to prescribe.

Cities of the second class and villages shall have power to prescribe the manner of conducting all municipal elections and the return of such elections and for holding special elections for any purpose provided by law.

Source: Laws 1879, § 69, XI, p. 213; Laws 1881, c. 23, § 8, XI, p. 175; Laws 1885, c. 20, § 1, XI, p. 166; Laws 1887, c. 12, § 1, XI, p. 294; R.S.1913, § 5117; C.S.1922, § 4290; C.S.1929, § 17-439; R.S.1943, § 17-527; Laws 1959, c. 60, § 55, p. 272; Laws 2017, LB133, § 144.

17-528 Electricity; franchises and contracts; tax; sale by public service company to city.

Cities of the second class and villages shall have power to grant a franchise, for a period of not to exceed twenty-five years, to any person, company, corporation, or association, whether publicly or privately owned, to furnish light and power to the residents, citizens, and corporations doing business in such city or village, and to make contracts, for a period of not to exceed five years, with such person, company, or association for the furnishing of light for the streets, lanes, alleys, and other public places and property of such city or village, and the inhabitants of such city or village, the furnishing of electricity to pump water or similar services for such city or village, and to levy a tax for the purpose of paying the costs of such lighting of streets, lanes, alleys, and other public places and property of such city or village. No public service company, whether publicly or privately owned, shall sell to any city of the second class or village, now generating its own electric current for all or the major portion of its electric requirements, unless first authorized so to do by a vote of the electors of such city or village, in the same manner and subject to the same conditions as are set forth in section 18-412. If no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or village board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

Source: Laws 1879, § 69, XIV, p. 214; Laws 1881, c. 23, § 8, XIV, p. 176; Laws 1885, c. 20, § 1, XIV, p. 166; Laws 1887, c. 12, § 1, XIV, p. 295; Laws 1895, c. 16, § 1, p. 111; Laws 1905, c. 27, § 1, p. 252; R.S.1913, § 5118; C.S.1922, § 4291; C.S.1929, § 17-440; Laws 1943, c. 28, § 2, p. 124; R.S.1943, § 17-528; Laws 1965, c. 58, § 2, p. 266; Laws 1969, c. 83, § 2, p. 419; Laws 2017, LB133, § 145.

17-528.02 Gas franchises; length; conditions; tax.

Cities of the second class and villages shall have power to grant a franchise, subject to the conditions of this section and section 17-528.03, for a period not exceeding twenty-five years to any person, company, or association, whether publicly or privately owned, and to his, her, or its assigns, to lay and maintain gas mains, pipes, service, and all other necessary structures in the streets, lanes, alleys, and public places of such city or village for the purpose of transporting gas on, under, or along any streets, lanes, alleys, and public places of such city or village and for furnishing gas to the inhabitants of such city or village. The city or village may make any reasonable regulation with reference

to any person, firm, or corporation holding such franchise as to charges for such gas. Such city or village is authorized to contract, lease, or rent the gas plant from any person, firm, or corporation furnishing gas within such city or village. Such contract, lease, or rental agreement shall not be for a period longer than five years. Such city or village may levy a tax to pay the rent under such lease or to pay for any gas used for street lighting or for other necessary purposes.

Source: Laws 1879, § 39, VI, p. 201; Laws 1881, c. 24, § 1, p. 195; Laws 1905, c. 27, § 1, p. 252; Laws 1911, c. 18, § 1, p. 135; R.S.1913, § 5019; Laws 1919, c. 45, § 1, p. 129; C.S.1922, § 4188; C.S. 1929, § 17-127; Laws 1943, c. 28, § 1, p. 123; R.S.1943, § 17-125; Laws 1957, c. 33, § 1(1), p. 196; Laws 1959, c. 49, § 1, p. 237; Laws 2017, LB133, § 146.

17-528.03 Electricity franchises; length; conditions; election, when required; exceptions.

Cities of the second class and villages shall have power to grant a franchise subject to the conditions of this section or section 17-528.02. Such franchise may run for a period not exceeding twenty-five years, and it may be granted to any person, company, or association, whether publicly or privately owned, and to his, her, or its assigns. Such franchise may permit the person, company, or association to erect and maintain poles, lines, wires, and conductors for electricity in the streets, lanes, alleys, and public places of such city or village and for furnishing electricity to the inhabitants of such city or village. Such franchise may establish the amount that may be charged during such period for electricity and provide that such city or village may, after such period, make any reasonable regulation with reference to any person, firm, or corporation holding such franchise either as to charges for electricity or otherwise. Such city or village is further authorized to contract, lease, or rent the plant, from any person, firm, or corporation, furnishing electricity, within such city or village, for power or the lighting of streets, lanes, alleys, and public places of such city or village, but not for a period longer than five years. Such city or village may levy a tax for the purpose of paying the cost of such lighting of streets, lanes, alleys, or public places of such city or village or to pay the rent under such lease. No public service company, whether publicly or privately owned, shall sell to any city of the second class or village, generating its own electric energy for all or a major portion of its electric requirements, unless first authorized so to do by a vote of the electors of such city or village, in the same manner and subject to the same conditions as are set forth in section 18-412. If no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or village board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

Source: Laws 1879, § 39, VI, p. 201; Laws 1881, c. 24, § 1, p. 195; Laws 1905, c. 27, § 1, p. 252; Laws 1911, c. 18, § 1, p. 135; R.S.1913, § 5019; Laws 1919, c. 45, § 1, p. 129; C.S.1922, § 4188; C.S. 1929, § 17-127; Laws 1943, c. 28, § 1, p. 123; R.S.1943, § 17-125; Laws 1957, c. 33, § 1(2), p. 197; Laws 1965, c. 58, § 3, p. 267; Laws 1969, c. 83, § 3, p. 419; Laws 2017, LB133, § 147.

17-529 Watercourses; aqueducts; wells; regulation.

Cities of the second class and villages shall have power (1) to establish and alter the channel of watercourses and to wall them and cover them over, (2) to establish, regulate, and provide for the filling of wells, cisterns and windmills, aqueducts, and reservoirs of water, and (3) to erect and maintain a dike or dikes as protection against flood or surface waters.

Source: Laws 1879, § 69, XV, p. 214; Laws 1881, c. 23, § 8, XV, p. 176; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 295; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 270; Laws 1919, c. 48, § 1, p. 136; Laws 1919, c. 52, § 1, p. 150; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 156; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 141; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-529; Laws 1947, c. 35, § 1(1), p. 146; Laws 2017, LB133, § 148.

17-529.01 Dikes; erection and maintenance; eminent domain; procedure.

In connection with the power to establish and alter the channel of watercourses and the power to erect and maintain dikes against flood waters and surface waters, cities of the second class and villages shall be empowered to exercise the power of eminent domain to acquire easements and rights-of-way over real estate situated either within or not more than two miles outside the corporate limits of such city or village, for the purpose of constructing either a ditch or a dike to prevent flooding of such city or village. The procedure for taking and condemning real estate for such purpose shall be exercised in the manner set forth in sections 76-704 to 76-724. In connection with such condemnation proceedings, the city or village shall be liable not only for the land actually taken but for consequential damages to other lands damaged by the construction of such improvement and shall be authorized to pay such damages out of any available funds on hand or by the issuance of bonds as provided by law.

Source: Laws 1947, c. 35, § 1(2), p. 146; Laws 1949, c. 23, § 1, p. 95; Laws 1951, c. 101, § 56, p. 473; Laws 1953, c. 287, § 16, p. 939; Laws 1965, c. 66, § 1, p. 286; Laws 2017, LB133, § 149.

Cross References

For additional flood control powers and duties of cities of the second class and villages, see section 23-320.07.

For funding provisions, see section 17-529.08.

17-529.02 Flood control projects; cooperation with United States; consent to requirements.

Cities of the second class and villages may cooperate with the United States Government in protecting against floods and enter into agreements with such government for that purpose. Such cities and villages may, in order to obtain federal funds for protecting against floods, consent to requirements of the Congress of the United States that such city or village (1) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of flood control projects, (2) hold and save the United States free and harmless from damages due to the construction works, and (3) maintain

and operate all the flood control works after completion in accordance with regulations prescribed by the Secretary of the Army of the United States.

Source: Laws 1947, c. 35, § 1(3), p. 146; Laws 1972, LB 1047, § 1; Laws 2017, LB133, § 150.

17-529.03 Flood control projects; removal to another site; definitions.

For purposes of sections 17-529.03 to 17-529.07:

(1) The term old city or village shall mean a city of the second class or village at its old location, and is not used in the sense that it is another or different city or village after its removal to a new site;

(2) The term new city or village shall mean a city of the second class or village at its new location, and is not used in the sense that it is another or different city or village than it was before its removal from an old site;

(3) The term county board shall mean the board of county commissioners or board of supervisors of a county; and

(4) The term governing board shall mean the city council of a city of the second class, or the village board of trustees.

Source: Laws 1947, c. 44, § 1, p. 160; Laws 2017, LB133, § 151.

17-529.05 Flood control projects; removal to another site; petition; contents; order for hearing; notice.

Whenever a petition is filed with the county clerk of any county, signed by either the governing board of any city of the second class or village or by one hundred or more electors of any city of the second class or village within such county setting forth: (1) That the United States Government has acquired, or is about to acquire, by purchase or eminent domain or both, the entire site upon which such city or village is located; (2) that the petitioners desire such city or village removed to another site and the corporate identity retained; (3) that a new site has been acquired, or contracted to be acquired, to which the old city or village can be removed; (4) that the petitioners intend to become residents of the new city or village when it is removed to the proposed new site; and (5) offer to pay all costs of the proceedings to effectuate such removal, the county board of such county shall enter an order setting such petition down for hearing not less than thirty nor more than sixty days after the filing of such petition and shall cause notice of such hearing to be given by publication three successive weeks prior to the hearing in a legal newspaper in or of general circulation in such county.

Source: Laws 1947, c. 44, § 3, p. 160; Laws 2017, LB133, § 152.

17-529.06 Flood control projects; removal to another site; hearing; entry of order.

Upon the hearing held pursuant to section 17-529.05, if the county board finds that the statements set forth in the petition are true and that it is in the best interests of the old city or village to authorize such removal, the county board shall enter an order granting such petition.

Source: Laws 1947, c. 44, § 4, p. 161; Laws 2017, LB133, § 153.

17-529.07 Flood control projects; removal to another site; order; effect.

The order granting a petition under section 17-529.05 shall have the following effect:

(1) The name and corporate identity of the old city or village shall be retained by the new city or village.

(2) The officers of the old city or village shall continue to be the officers of the new city or village until their successors are elected and qualified at the time and in the manner provided by law.

(3) The funds and property of the old city or village shall be retained by and belong to the new city or village.

(4) The proceeds from the sale or condemnation of municipally owned property of the old city or village shall accrue and be paid to the new city or village, except that any outstanding bonded indebtedness of or judgments against the old city or village shall be paid to the holders of such bonds or judgments who shall demand payment thereof and are not willing to permit such bonds or judgments to continue as an indebtedness due from the new city or village.

(5) The ordinances of the old city or village shall continue in full force and effect as the ordinances of the new city or village.

(6) The proceeds from the sale or condemnation of any public school buildings and grounds situated within the old city or village shall be used for the purchase and construction of a new school building and grounds at the new site, if the new site is located within the same school district as the old site, and if not, the proceeds shall be apportioned between the school district in which the new city or village is located and the school district in which the old city or village was located in the proportion that the actual valuation of the property purchased and condemned by the United States Government in such school district bears to the valuation of the property remaining in such school district not condemned or purchased by the United States Government.

(7) The proceeds from the sale or condemnation of any public buildings and grounds of any township in which the old city or village was located shall be used for the purchase and construction of similar buildings and grounds at the new site, if the new site is located within the same township as the old site, and if not, the proceeds shall be apportioned between the township in which the new city or village is located and the township in which the old city or village was located in the proportion that the actual valuation of the property purchased and condemned by the United States Government in such township bears to the actual valuation of the property remaining in such township not condemned or purchased by the United States Government.

Source: Laws 1947, c. 44, § 5, p. 161; Laws 1979, LB 187, § 51; Laws 2017, LB133, § 154.

17-529.08 Flood control projects; bonds; interest; election; tax; levy.

(1) For the purpose of paying the costs and expenses in implementing sections 17-529.01 and 17-529.02, cities of the second class and villages may borrow money or issue bonds in an amount not to exceed five percent of the taxable valuation of all the taxable property within such city or village according to the most recent assessment.

(2) Such cities or villages may levy and collect a general tax in the same manner as other municipal taxes are levied and collected in an amount

sufficient to pay the interest and principal of the bonds referred to in subsections (1) and (3) of this section, as the same mature, upon the taxable value of all the taxable property within such city or village as shown upon the assessment roles, in addition to the sum authorized to be levied under section 17-506.

(3) No money shall be borrowed or bonds issued as referred to in subsections (1) and (2) of this section unless authorized by a majority of the legal votes cast for and against the proposition at an election held for that purpose. Notice of the election shall be given by publication in a legal newspaper in or of general circulation in such city or village for at least two weeks prior to the date of such election. The bonds shall be the bonds of such city or village, shall become due in not to exceed twenty years from their date of issue, and shall draw interest payable semiannually or annually.

Source: Laws 1965, c. 73, § 1, p. 296; Laws 1969, c. 51, § 46, p. 300; Laws 1971, LB 534, § 14; Laws 1979, LB 187, § 52; Laws 1992, LB 719A, § 53; Laws 2017, LB133, § 155.

17-530 Waterworks; franchises; terms.

Cities of the second class and villages shall have power to make contracts with and authorize any person, company, or corporation to erect and maintain a system of waterworks and water supply, and to give such contractors the exclusive privilege for a term not exceeding twenty-five years to lay down in the streets and alleys of such city or village water mains and supply pipes, and to furnish water to such city or village, and the residents of such cities or villages, under such regulations as to price, supply, and rent of water meters, as the city council or village board of trustees may from time to time prescribe by ordinance for the protection of the city or village. The right to supervise and control such person, company, or corporation shall not be waived or set aside.

Source: Laws 1881, c. 23, § 8, XV, p. 176; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 295; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 46, § 2, p. 131; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 150; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 141; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-530; Laws 2017, LB133, § 156.

17-531 Waterworks; acquisition or construction authorized.

Cities of the second class and villages shall have power to provide for the purchase of fire-extinguishing apparatus and for a supply of water for the purpose of fire protection and public use and for the use of the inhabitants of such cities and villages by the purchase, erection, or construction of a system of waterworks, water mains, or extensions of any system of waterworks established or situated in whole or in part within such city or village, and for maintaining such fire-extinguishing apparatus or system of waterworks.

Source: Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46,

§ 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-531; Laws 2017, LB133, § 157.

17-532 Waterworks; private companies; compulsory connections.

Cities of the second class and villages shall have power to require any person, firm, or corporation operating any public water supply in such city or village to connect with and furnish water to such city or village from its mains located within such city or village, and to provide by ordinance for connections of such mains with the mains or portion of water system constructed or operated by such city or village, under such regulations and under such penalties as may be prescribed by ordinance.

Source: Laws 1907, c. 17, § 1, p. 126; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-532; Laws 2017, LB133, § 158.

17-533 Waterworks; construction; bids.

All contracts for the construction of any work pursuant to sections 17-530 to 17-532, or any portion of such work, shall be let to the lowest responsible bidder, and upon not less than twenty days' published notice of the terms and conditions upon which the contract is to be let having been given by publication in a legal newspaper in or of general circulation in such city or village. In all cases the city council or village board of trustees shall have the right to reject any and all bids that may not be satisfactory.

Source: Laws 1881, c. 23, § 8, XV, p. 177; Laws 1885, c. 20, § 1, XV, p. 167; Laws 1887, c. 12, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 133; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 256; Laws 1907, c. 17, § 1, p. 127; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 137; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 131; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 157; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-533; Laws 2017, LB133, § 159.

17-534 Waterworks; purchase or construction; bonds; interest; limitation; tax; approval of electors required; exception.

(1) Cities of the second class and villages may borrow money or issue bonds in an amount not to exceed twelve percent of the taxable valuation of all the taxable property within such city or village according to the most recent assessment for the purchase of fire-extinguishing apparatus and for the purchase, construction, and maintenance of such waterworks, mains, portion, or extension of any system of waterworks or water supply or to pay for water furnished such city or village under contract, when authorized as is provided for by subsection (3) of this section.

(2) Such cities or villages may levy and collect a general tax in the same manner as other municipal taxes are levied and collected in an amount

sufficient to pay the interest and principal of the bonds referred to in subsections (1) and (3) of this section, as the same mature, upon the taxable value of all the taxable property within such city or village, in addition to the sum authorized to be levied under section 17-506. All taxes raised by such a levy shall be retained in a fund known as the water fund.

(3) No money shall be borrowed or bonds issued as referred to in subsections (1) and (2) of this section unless authorized by a majority of the legal voters of such city or village voting on the proposition at an election held for that purpose. Notice of the election shall be given by publication in a legal newspaper in or of general circulation in such city or village for at least two weeks prior to the date of such election. The requirement of this section of a vote of the electors shall not apply when the proceeds of the bonds will be used solely for the maintenance, extension, improvement, or enlargement of any existing system of waterworks or water supply owned by the city or village and the bonds have been ordered issued by a vote of not less than three-fourths of all the city council or village board of trustees as the case may be. The bonds shall be the bonds of such city or village and be called water bonds. The bonds shall become due in not to exceed forty years from the date of issue and shall draw interest payable semiannually or annually.

Source: Laws 1881, c. 23, § 8, XV, p. 177; Laws 1885, c. 20, § 1, XV, p. 168; Laws 1887, c. 20, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 134; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 257; Laws 1907, c. 17, § 1, p. 127; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 132; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 158; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-534; Laws 1945, c. 30, § 1, p. 147; Laws 1949, c. 24, § 1, p. 96; Laws 1955, c. 50, § 1, p. 169; Laws 1969, c. 51, § 47, p. 301; Laws 1971, LB 83, § 1; Laws 1971, LB 982, § 1; Laws 1979, LB 187, § 53; Laws 1992, LB 719A, § 54; Laws 2017, LB133, § 160.

17-535 Waterworks; construction and maintenance; acquisition of land beyond extraterritorial zoning jurisdiction; procedure.

For the purpose of erecting, constructing, locating, maintaining, or supplying waterworks, mains, portion, or extension of any system of waterworks or water supply as provided in sections 17-530 to 17-532, any city of the second class or village may go beyond its extraterritorial zoning jurisdiction and may take, hold, or acquire rights, property, and real estate by purchase or otherwise, and may for this purpose, take, hold, and condemn any and all necessary property. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 297; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 257; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 132; C.S.1922, § 4292; Laws

1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-535; Laws 1951, c. 101, § 57, p. 473; Laws 2017, LB133, § 161.

17-536 Waterworks; water supply; pollution; power to prevent.

The jurisdiction of a city of the second class or village to prevent any pollution or injury to the stream or source of water for the supply of waterworks constructed under sections 17-530 to 17-532 shall extend fifteen miles beyond its corporate limits.

Source: Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-536; Laws 2017, LB133, § 162.

17-537 Waterworks; rules and regulations.

The city council of a city of the second class or village board of trustees shall have power to make and enforce all necessary rules and regulations in the construction, use, and management of waterworks, mains, portion, or extension of any system of waterworks or water supply and for the use of the water from such system.

Source: Laws 1881, c. 23, § 8, XV, p. 178; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 251; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 272; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-537; Laws 2017, LB133, § 163.

17-538 Waterworks; use of water; rates or rental; collection.

Cities of the second class and villages shall have the right and power to tax, assess, and collect from the inhabitants of such cities and villages such tax, rent, or rates for the use and benefit of water used or supplied to them by such waterworks, mains, portion, or extension of any system of waterworks or water supply as the city council or village board of trustees shall deem just or expedient. All such water rates, taxes, or rent shall be a lien upon the premises, or real estate, upon or for which such water is used or supplied; and such taxes, rents, or rates shall be paid and collected and such lien enforced in such manner as the city council or village board of trustees shall provide by ordinance.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 169; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5118; Laws 1917, c.

103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 152; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-538; Laws 2017, LB133, § 164.

17-539 Waterworks; construction; cost; special assessments.

The expense of erecting, locating, and constructing reservoirs and hydrants for the purpose of fire protection and the expense of constructing and laying water mains, pipes, or such parts of such mains or pipes as may be just and lawful, may be assessed upon and collected from the property and real estate specially benefited by such reservoirs, hydrants, mains, or pipes, if any, as a special assessment in such manner as may be provided for the making of special assessments for other public improvements in cities of the second class and villages.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 298; Laws 1893, c. 8, § 1, p. 135; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 128; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 159; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 143; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-539; Laws 2015, LB361, § 32; Laws 2017, LB133, § 165.

17-540 Waterworks; income; how used; surplus, investment.

All income received by cities of the second class or villages from public utilities and from the payment and collection of water taxes, rents, rates, or assessments shall be applied to the payment of running expenses, interest on bonds or money borrowed, and the erection and construction of public utilities. If there is any surplus income, such income shall be placed into a sinking fund for the payment of public utility bonds or for the improvements of the works, or into the general fund as the city council or village board of trustees may direct. The surplus remaining, if any, may, if the city council or village board of trustees so directs, be invested in interest-bearing bonds or obligations of the United States.

Source: Laws 1881, c. 23, § 8, XV, p. 179; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 299; Laws 1893, c. 8, § 1, p. 136; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 258; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 133; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 160; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 144; C.S.Supp.,1941, § 17-441; Laws 1943, c. 27, § 1(1), p. 121; R.S.1943, § 17-540; Laws 1969, c. 93, § 1, p. 459; Laws 2017, LB133, § 166.

17-541 Waterworks; water commissioner; appointment; term; bond or insurance; removal; public works commissioner, when.

As soon as a system of waterworks or mains or portion or extension of any system of waterworks or water supply has been established by a city of the second class or village, the mayor of such city or the chairperson of the village board of trustees shall nominate and, by and with the advice and consent of the city council or village board of trustees, shall appoint any competent person who shall be known as the water commissioner of such city or village and whose term of office shall be for one fiscal year or until his or her successor is appointed and qualified. Annually at the first regular meeting of the city council or village board of trustees in December, the water commissioner shall be appointed as provided in this section. The water commissioner may at any time, for sufficient cause, be removed by a two-thirds vote of the city council or village board of trustees. Any vacancy occurring in the office of water commissioner by death, resignation, removal from office, or removal from the city or village may be filled in the manner provided in this section for the appointment of such commissioner.

The water commissioner shall, before he or she enters upon the discharge of his or her duties, execute a bond or provide evidence of equivalent insurance to such city or village in a sum to be fixed by the mayor and city council or the village board of trustees, but not less than five thousand dollars, conditioned upon the faithful discharge of his or her duties, and such bond shall be signed by two or more good and sufficient sureties, to be approved by the mayor and city council or village board of trustees or executed by a corporate surety.

The water commissioner, subject to the supervision of the mayor and city council or village board of trustees, shall have the general management and control of the system of waterworks or mains or portion or extension of any system of waterworks or water supply in the city or village. In a city of the second class or village where no board of public works exists, and such city or village has other public utilities than its waterworks system, the mayor and city council or the village board of trustees shall by ordinance designate the water commissioner as public works commissioner with authority to manage not only the system of waterworks but also other public utilities, and all of the provisions of this section applying to the water commissioner shall apply to the public works commissioner.

Source: Laws 1881, c. 23, § 8, XV, p. 180; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 299; Laws 1893, c. 8, § 1, p. 136; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 160; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 144; Laws 1937, c. 33, § 1, p. 158; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-541; Laws 1961, c. 51, § 1, p. 193; Laws 2001, LB 484, § 1; Laws 2007, LB347, § 11; Laws 2017, LB133, § 167.

17-542 Waterworks; rates; regulation.

The city council of a city of the second class or village board of trustees is hereby expressly given the power to fix the rates to be paid by water consumers of such city or village for the use of water from the waterworks of such city or village, including the power to require, as a condition precedent to the use of

such water, the furnishing of water meters at the expense of such water consumers as may be provided by ordinance of such city or village.

Source: Laws 1881, c. 23, § 8, XV, p. 181; Laws 1885, c. 20, § 1, XV, p. 171; Laws 1887, c. 12, § 1, XV, p. 300; Laws 1893, c. 8, § 1, p. 137; Laws 1903, c. 21, § 1, p. 253; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 274; Laws 1919, c. 48, § 1, p. 140; Laws 1919, c. 52, § 1, p. 154; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 161; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 145; Laws 1937, c. 33, § 1, p. 158; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-542; Laws 2017, LB133, § 168.

17-543 Waterworks; water commissioner; duty to account; report; salary; public works commissioner; duties.

The water commissioner in a city of the second class or village shall collect all money received by such city or village on account of its system of waterworks and shall faithfully account for and pay over such money to the city treasurer or village treasurer, taking his or her receipt for such money in duplicate and filing a receipt with the city clerk or village clerk. The water commissioner shall make a detailed report to the city council or village board of trustees, at least once every six months, of the condition of the water system, of all mains, pipes, hydrants, reservoirs, and machinery, and such improvements, repairs, and extension of such system as he or she may think proper. The report shall show the amount of receipts and expenditures on account of such system for the preceding six months. No money shall be expended for improvements, repairs, or extension of the waterworks system except upon recommendation of the water commissioner. The water commissioner shall perform such other duties as may be prescribed by ordinance. The water commissioner shall be paid such salary as the city council or village board of trustees may by ordinance provide, and upon his or her written recommendation, the mayor and city council or chairperson and village board of trustees shall employ such laborers and clerks as deemed necessary. Neither the mayor nor any member of the city council in a city of the second class shall be eligible to the office of water commissioner during the term for which he or she was elected. If the city or village involved owns public utilities other than the waterworks system, and the water commissioner has been designated by ordinance as the public works commissioner under the authority of section 17-541, then all provisions of this section in reference to a water commissioner shall apply to the public works commissioner.

Source: Laws 1881, c. 23, § 8, XV, p. 181; Laws 1885, c. 20, § 1, XV, p.172; Laws 1887, c. 12, § 1, XV, p. 300; Laws 1893, c. 8, § 1, p. 137; Laws 1903, c. 21, § 1, p. 253; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 274; Laws 1919, c. 48, § 1, p. 140; Laws 1919, c. 52, § 1, p. 154; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 161; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 145; Laws 1937, c. 33, § 1, p. 159; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-543; Laws 1961, c. 51, § 2, p. 194; Laws 1983, LB 310, § 1; Laws 2017, LB133, § 169.

17-545 Waterworks; additional tax; when authorized.

Every city of the second class and village in the State of Nebraska which owns its own water plant and a system of hydrants in connection with such water plant is hereby authorized and empowered to provide a fund upon the presentation to the city council or village board of trustees of a petition signed by sixty percent of the legal voters of the city or village, in addition to the general fund of such city or village, by making a levy at the time authorized by law, not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property of the city or village, for the purpose of paying the expense or aiding in paying the expense of maintaining such system of hydrants and pumping and supplying through them water for public purposes.

Source: Laws 1915, c. 217, § 1, p. 486; C.S.1922, § 4294; C.S.1929, § 17-443; R.S.1943, § 17-545; Laws 1953, c. 287, § 17, p. 939; Laws 1979, LB 187, § 54; Laws 1992, LB 719A, § 55; Laws 2017, LB133, § 170.

17-546 Waterworks; additional tax; provision cumulative.

The right and power to provide the fund mentioned in section 17-545 for purposes of paying the expense of maintaining a system of hydrants shall in no way prevent cities of the second class and villages from providing in whole or in part for the expense of such hydrants, and of pumping and supplying through them water for public purposes, in any other manner provided by law.

Source: Laws 1915, c. 217, § 2, p. 486; C.S.1922, § 4295; C.S.1929, § 17-444; R.S.1943, § 17-546; Laws 2017, LB133, § 171.

17-547 Animals running at large; regulation.

Cities of the second class and villages shall have power to regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other animals and to cause such animals as may be running at large to be impounded and sold to discharge the cost and penalties provided for the violation of such regulations and the expense of impounding and keeping such animals and of such sales.

Source: Laws 1879, § 69, XVI, p. 214; Laws 1881, c. 23, § 8, XVI, p. 182; Laws 1885, c. 20, § 1, XVI, p. 173; Laws 1887, c. 12, § 1, XVI, p. 301; R.S.1913, § 5121; C.S.1922, § 4296; C.S.1929, § 17-445; R.S.1943, § 17-547; Laws 2017, LB133, § 172.

17-548 Pounds; establishment.

Cities of the second class and villages shall have power to provide for the erection of all needful pens and pounds within or without their corporate limits, to appoint and compensate keepers of such pens and pounds, and to establish and enforce rules governing such pens and pounds.

Source: Laws 1879, § 69, XVII, p. 214; Laws 1881, c. 23, § 8, XVII, p. 182; Laws 1885, c. 20, § 1, XVII, p. 173; Laws 1887, c. 12, § 1, XVII, p. 301; R.S.1913, § 5122; C.S.1922, § 4297; C.S.1929, § 17-446; R.S.1943, § 17-548; Laws 2017, LB133, § 173.

17-549 Fire prevention; regulations.

Cities of the second class and villages shall have power to regulate the construction of and order the suppression and cleaning of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, business, or enterprise which may be dangerous in causing or promoting fires and to prescribe the limits within which no dangerous or obnoxious and offensive business or enterprise may be conducted.

Source: Laws 1879, § 69, XVIII, p. 214; Laws 1881, c. 23, § 8, XVIII, p. 182; Laws 1885, c. 20, § 1, XVIII, p. 173; Laws 1887, c. 12, § 1, XVIII, p. 301; R.S.1913, § 5123; C.S.1922, § 4298; C.S.1929, § 17-447; R.S.1943, § 17-549; Laws 2017, LB133, § 174.

17-550 Buildings; construction; regulation.

Cities of the second class and villages shall have power to prescribe and alter limits within which no buildings shall be constructed except of brick, stone, or other incombustible material, with fireproof roof. After such limits are established, no special permits shall be given for the erection of buildings of combustible material within such limits.

Source: Laws 1879, § 69, XIX, p. 214; Laws 1881, c. 23, § 8, XIX, p. 182; Laws 1885, c. 20, § 1, XIX, p. 173; Laws 1887, c. 12, § 1, XIX, p. 301; R.S.1913, § 5124; C.S.1922, § 4299; C.S.1929, § 17-448; R.S.1943, § 17-550; Laws 2017, LB133, § 175.

17-551 Railways; depots; regulation.

Cities of the second class and villages shall have power to regulate levees, depots, depot grounds, and places for storing freight and goods and to provide for and regulate the passage of railways through streets and public grounds of the city or village.

Source: Laws 1879, § 69, XX, p. 215; Laws 1881, c. 23, § 8, XX, p. 182; Laws 1885, c. 20, § 1, XX, p. 173; Laws 1887, c. 12, § 1, XX, p. 302; R.S.1913, § 5125; C.S.1922, § 4300; C.S.1929, § 17-449; R.S.1943, § 17-551; Laws 2017, LB133, § 176.

17-552 Railways; crossings; safety regulations.

Cities of the second class and villages shall have power to regulate the crossing of railway tracks and the running of railway engines, cars, or trucks within the corporate limits of such city or village and to govern the speed of such engines, cars, or trucks, and to make any other and further provisions, rules, and restrictions to prevent accidents at crossings and on the tracks of railways.

Source: Laws 1879, § 69, XXI, p. 215; Laws 1881, c. 23, § 8, XXI, p. 183; Laws 1885, c. 20, § 1, XXI, p. 174; Laws 1887, c. 12, § 1, XXI, p. 302; R.S.1913, § 5126; C.S.1922, § 4301; C.S.1929, § 17-450; R.S.1943, § 17-552; Laws 2017, LB133, § 177.

17-554 Fuel and feed; inspection and weighing.

Cities of the second class and villages shall have power to (1) provide for the inspection and weighing of hay, grain, and coal, and the measuring of wood and fuel to be used in the city or village, (2) regulate and prescribe the place or

places for sale of hay, coal, and wood, and (3) fix the fees and duties of persons authorized to perform inspections under this section.

Source: Laws 1879, § 69, XXIII, p. 215; Laws 1881, c. 23, § 8, XXIII, p. 183; Laws 1885, c. 20, § 1, XXIII, p. 174; Laws 1887, c. 12, § 1, XXIII, p. 302; R.S.1913, § 5128; C.S.1922, § 4303; C.S.1929, § 17-452; R.S.1943, § 17-554; Laws 2017, LB133, § 178.

17-555 Streets and sidewalks; removal of obstructions; trees; declaration of nuisance; procedure; special assessment.

(1) Cities of the second class or villages may remove all obstructions from sidewalks, curbstones, gutters, and crosswalks at the expense of the person placing them there or at the expense of the city or village and require and regulate the planting and protection of shade trees in and along the streets and the trimming and removing of such trees.

(2) Cities of the second class or villages may by ordinance declare it to be a nuisance for a property owner to permit, allow, or maintain any dead or diseased trees within the right-of-way of streets within the corporate limits or within the extraterritorial zoning jurisdiction of the city or village. Notice to abate and remove such nuisance and notice of the right to a hearing and the manner in which it may be requested shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city or village shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city or village to appeal the decision to abate or remove the nuisance by filing a written appeal with the office of the city clerk or village clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city or village may have the work done to abate and remove the dead or diseased trees. If the owner or occupant of the lot or piece of ground does not request a hearing with the city or village within five days after receipt of such notice or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The city or village may levy and assess all or any portion of the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment.

(3) Cities of the second class or villages may regulate the building of bulkheads, cellar and basement ways, stairways, railways, windows, doorways, awnings, lampposts, awning posts, all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the city or village.

Source: Laws 1879, § 69, XXIV, p. 215; Laws 1881, c. 23, § 8, XXIV, p. 183; Laws 1885, c. 20, § 1, XXIV, p. 174; Laws 1887, c. 12, § 1, XXIV, p. 303; R.S.1913, § 5129; C.S.1922, § 4304; C.S.1929, § 17-453; R.S.1943, § 17-555; Laws 1994, LB 695, § 6; Laws 2015, LB266, § 11; Laws 2015, LB361, § 33; Laws 2016, LB703, § 2; Laws 2017, LB133, § 179.

17-556 Public safety; firearms; explosives; riots; regulation.

Cities of the second class and villages shall have the power to (1) prevent and restrain riots, routs, noises, disturbances, or disorderly assemblages, (2) regulate, prevent, restrain, or remove nuisances and to designate what shall be considered a nuisance, (3) regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings, (4) regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and (5) arrest, regulate, punish, or fine all vagrants.

Source: Laws 1879, § 69, XXV, p. 216; Laws 1881, c. 23, § 8, XXV, p. 184; Laws 1885, c. 20, § 1, XXV, p. 175; Laws 1887, c. 12, § 1, XXV, p. 303; R.S.1913, § 5130; C.S.1922, § 4305; C.S.1929, § 17-454; R.S.1943, § 17-556; Laws 2009, LB430, § 4; Laws 2017, LB133, § 180.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

17-557 Streets; safety regulations; removal of snow, ice, and other encroachments.

Cities of the second class and villages shall have power to (1) prevent and remove all encroachments, including snow, ice, mud, or other obstructions, into and upon all sidewalks, streets, avenues, alleys, and other city or village property, (2) punish and prevent all horseracing, fast driving, or riding in the streets, highways, alleys, bridges, or places in the city or village, (3) regulate all games, practices, or amusements within the city or village likely to result in damage to any person or property, and (4) regulate and prevent the riding, driving, or passing of horses, mules, cattle, or other animals over, upon, or across sidewalks or along any street of the city or village.

Source: Laws 1879, § 69, XXVI, p. 216; Laws 1881, c. 23, § 8, XXVI, p. 184; Laws 1885, c. 20, § 1, XXVI, p. 175; Laws 1887, c. 12, § 1, XXVI, p. 303; R.S.1913, § 5131; C.S.1922, § 4306; C.S.1929, § 17-455; R.S.1943, § 17-557; Laws 1947, c. 37, § 1, p. 148; Laws 2017, LB133, § 181.

17-557.01 Sidewalks; removal of encroachments; cost of removal; special assessments; interest.

If the abutting property owner refuses or neglects, after five days' notice by publication or, in place thereof, personal service of such notice, to remove all encroachments from sidewalks, as provided in section 17-557, the city of the second class or village through the proper officers may cause such encroachments to be removed and the cost of removal shall be paid out of the street fund. The city council or village board of trustees shall assess the cost of the notice and removal of the encroachment against such abutting property as a special assessment. Such special assessment shall be known as a special sidewalk assessment and, together with the cost of notice, shall be levied and collected as a special assessment in addition to the general revenue taxes and shall be subject to the same penalties as other special assessments and shall

draw interest from the date of the assessment. Upon payment of the assessment, the assessment shall be credited to the street fund.

Source: Laws 1947, c. 37, § 2, p. 149; Laws 1969, c. 51, § 48, p. 302; Laws 2015, LB361, § 34; Laws 2017, LB133, § 183.

17-558 Streets; improving; vacating; abutting property; how treated.

(1) Cities of the second class and villages shall have power to open, widen, or otherwise improve or vacate any street, avenue, alley, or lane within the limits of the city or village and also to create, open, and improve any new street, avenue, alley, or lane. All damages sustained by the citizens of the city or village, or by the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance.

(2) Whenever any street, avenue, alley, or lane is vacated, such street, avenue, alley, or lane shall revert to the owners of the abutting real estate, one-half on each side thereof, and become a part of such property, unless the city or village reserves title in the ordinance vacating such street or alley. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(3) When a portion of a street, avenue, alley, or lane is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property unless the city or village reserves title in the ordinance vacating a portion of such street, avenue, alley, or lane. If title is retained by the city or village, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city or village.

(4) When the city or village vacates all or any portion of a street, avenue, alley, or lane, the city or village shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance or resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(5) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city or village the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city or village, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

Source: Laws 1879, § 69, XXVII, p. 216; Laws 1881, c. 23, § 8, XXVII, p. 184; Laws 1885, c. 20, § 1, XXVII, p. 175; Laws 1887, c. 12, § 1, XXVII, p. 304; R.S.1913, § 5132; C.S.1922, § 4307; C.S.1929,

§ 17-456; R.S.1943, § 17-558; Laws 1969, c. 58, § 3, p. 364; Laws 2001, LB 483, § 6; Laws 2005, LB 161, § 7; Laws 2017, LB133, § 182.

17-559 Streets; offstreet parking; markets; public utilities; establishment; eminent domain; procedure.

Cities of the second class and villages shall have power to (1) create, open, widen, or extend any street, avenue, alley, offstreet parking area, or other public way, or annul, vacate, or discontinue such street, avenue, alley, area, or public way, (2) take private property for public use for the purpose of erecting or establishing market houses, market places, parks, swimming pools, airports, gas systems, including distribution facilities, water systems, power plants, including electrical distribution facilities, sewer systems, or for any other needed public purpose, and (3) exercise the power of eminent domain within or without the city or village limits for the purpose of establishing and operating power plants including electrical distribution facilities to supply such city or village with public utility service, and for sewerage purposes, water supply systems, or airports. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, electrical distribution facilities shall be located within the retail service area of such city or village as approved by and on file with the Nebraska Power Review Board, pursuant to Chapter 70, article 10.

Source: Laws 1879, § 69, XXVIII, p. 217; Laws 1881, c. 23, § 8, XXVIII, p. 185; Laws 1885, c. 20, § 1, XXVIII, p. 176; Laws 1887, c. 12, § 1, XXVIII, p. 304; Laws 1909, c. 23, § 1, p. 195; R.S.1913, § 5133; Laws 1919, c. 47, § 1, p. 136; C.S.1922, § 4308; Laws 1923, c. 137, § 1, p. 336; C.S.1929, § 17-457; R.S.1943, § 17-559; Laws 1951, c. 101, § 58, p. 473; Laws 1959, c. 50, § 1, p. 240; Laws 1982, LB 875, § 2; Laws 2002, LB 384, § 25; Laws 2017, LB133, § 184.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

17-560 Borrowing power; pledges.

Cities of the second class and villages shall have power to borrow money on the credit of the city, and pledge the credit, revenue, and public property of the city for the payment of debts, when authorized in the manner provided by law.

Source: Laws 1879, § 69, XXIX, p. 217; Laws 1881, c. 23, XXIX, p. 185; Laws 1885, c. 20, § 1, XXIX, p. 176; Laws 1887, c. 12, § 1, XXIX, p. 305; R.S.1913, § 5134; C.S.1922, § 4309; C.S.1929, § 17-458; R.S.1943, § 17-560; Laws 2017, LB133, § 185.

17-561 Railway tracks; lighting, city may require; cost; assessment.

Cities of the second class and villages shall have the power to require the lighting of the railroad track of any railway within the city or village in such manner as prescribed by ordinance. If any company owning or operating such railway fails to comply with such requirements, the city council or village board of trustees may cause such lighting to be done and may assess the expense of

such lighting against such company. Such assessment shall constitute a lien upon any real estate belonging to such company and lying within such city or village and may be collected in the same manner as taxes for general purposes.

Source: Laws 1911, c. 19, § 1, p. 136; R.S.1913, § 5135; C.S.1922, § 4310; C.S.1929, § 17-501; R.S.1943, § 17-561; Laws 2017, LB133, § 186.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; special assessment; violation; penalty; civil action.

(1) A city of the second class or village by ordinance (a) may require lots or pieces of ground within the city or village or within its extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating on such lot or piece of ground, (b) may require the owner or occupant of any lot or piece of ground within the city or village or within its extraterritorial zoning jurisdiction to keep the lot or piece of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and (c) may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village or within its extraterritorial zoning jurisdiction.

(2) Any city of the second class or village may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city or village shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city or village shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city or village to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk or village clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city or village may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited as a special assessment in the same manner as other special assessments for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus sp.*) (tourn), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

Source: Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Laws 2009, LB495, § 8; Laws 2013, LB643, § 2; Laws 2015, LB266, § 12; Laws 2015, LB361, § 35; Laws 2017, LB133, § 187.

17-564 Fines; actions to recover.

Fines for violation of an ordinance of a city of the second class or village may, in addition to any other mode provided, be recovered by suit or action before a court of competent jurisdiction, in the name of the state. In any such suit or action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as nearly as may be the facts of the alleged violation.

Source: Laws 1879, § 72, p. 220; R.S.1913, § 5138; C.S.1922, § 4313; C.S.1929, § 17-504; R.S.1943, § 17-564; Laws 1972, LB 1032, § 108; Laws 2017, LB133, § 188.

17-565 Fines; action to recover; limitation.

All suits for the recovery of any fine, and prosecutions for the commission of any offense made punishable by ordinance of a city of the second class or village, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

Source: Laws 1879, § 74, p. 220; R.S.1913, § 5139; C.S.1922, § 4314; C.S.1929, § 17-505; R.S.1943, § 17-565; Laws 2017, LB133, § 189.

17-566 County jail; use by city; compensation.

Any city of the second class or village shall have the right to use the county jail in the county in which the city or village is located for the confinement of such persons as may be imprisoned under the ordinances of such city or

village. The city or village shall be liable to the county for the cost of keeping such prisoners as provided by section 47-120.

Source: Laws 1879, § 73, p. 220; R.S.1913, § 5140; C.S.1922, § 4315; C.S.1929, § 17-506; Laws 1937, c. 85, § 2, p. 283; C.S.Supp.,1941, § 17-506; R.S.1943, § 17-566; Laws 1961, c. 47, § 2, p. 184; Laws 1989, LB 4, § 2; Laws 2017, LB133, § 190.

17-567 Highways, streets, bridges; maintenance and control.

(1) The city council of a city of the second class or village board of trustees shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within such city or village and shall cause such highways, bridges, streets, alleys, public squares, and commons to be kept open and in repair and free from nuisances.

(2) All public bridges exceeding sixty feet in length, over any stream crossing a state or county highway, shall be constructed and kept in repair by the county. When any city of the second class or village has constructed a bridge over sixty feet span, on any county or state highway within the corporate limits of such city or village, and has incurred a debt for such bridge, the county treasurer of the county in which such bridge is located shall pay to the city treasurer or village treasurer seventy-five percent of all bridge taxes collected in the city or village until such debt, and interest thereon, is fully paid.

(3) The city council or village board of trustees may appropriate a sum not exceeding five dollars per linear foot to aid in the construction of any county bridge within the limits of such city or village, or may appropriate a like sum to aid in the construction of any bridge contiguous to the city or village, on a highway leading to the same, or any bridge across any unnavigable river which divides the county, in which the city or village is located, from another state.

(4) No street or alley shall be dedicated to public use, by the proprietor of ground in any city of the second class or village, shall be deemed a public street or alley, or shall be under the use or control of the city council or village board of trustees, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

Source: Laws 1879, § 77, p. 221; R.S.1913, § 5141; C.S.1922, § 4316; C.S.1929, § 17-507; R.S.1943, § 17-567; Laws 1957, c. 30, § 2, p. 190; Laws 1959, c. 49, § 2, p. 238; Laws 1982, LB 909, § 6; Laws 2017, LB133, § 191.

17-568 Employment of special engineer.

The mayor and city council of a city of the second class or village board of trustees may employ a special engineer to make, or assist in making, any estimate necessary or to perform any other duty provided for in section 17-568.01. Any work executed by such special engineer shall have the same validity and serve in all respects as though executed by the city engineer or village engineer.

Source: Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202; C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(1), p. 98; Laws 1951, c. 33, § 1, p. 133; Laws 1983, LB 304, § 3; Laws 2017, LB133, § 192.

17-568.01 City engineer or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board of trustees; powers and duties; public emergency.

(1) The city engineer in a city of the second class or village engineer shall, when requested by the mayor, city council, or village board of trustees, make estimates of the cost of labor and material which may be done or furnished by contract with the city or village and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light systems, waterworks, power plants, public heating systems, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the city council or village board of trustees may require.

When a city of the second class has appointed a board of public works, and the mayor and city council have by ordinance so authorized, the board of public works may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board of public works.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council or village board of trustees.

(3) Except as provided in section 18-412.01, before the city council or village board of trustees makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer or village engineer and submitted to the city council or village board of trustees. In advertising for bids as provided in subsections (4) and (6) of this section, the city council or village board of trustees may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the

municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper in or of general circulation in the city or village. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 17-613 when adopted by a three-fourths vote of the city council or village board of trustees and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council or village board of trustees receives fewer than two bids on a contract or if the bids received by the city council or village board of trustees contain a price which exceeds the estimated cost, the mayor and the city council or village board of trustees may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council, village board of trustees, or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council, village board of trustees, or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202; C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(2), p. 98; Laws 1951, c. 34, § 1, p. 134; Laws 1957, c. 32, § 1, p. 195; Laws 1959, c. 61, § 2, p. 277; Laws 1969, c. 78, § 2, p. 409; Laws 1975, LB 171, § 2; Laws 1979, LB 356, § 2; Laws 1983, LB 304, § 4; Laws 1984, LB 540, § 8; Laws 1997, LB 238, § 3; Laws 2008, LB947, § 2; Laws 2017, LB133, § 193.

17-568.02 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council, village board of trustees, 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; Laws 2017, LB133, § 194.

17-569 Abandoned real estate; sale; ordinance.

Before any sale of abandoned real estate is made by a city of the second class or village, the city council or village board of trustees shall by ordinance set forth the date of the purchase, gift, or condemnation, a description of the property, the purpose for which such real estate was acquired, the abandonment of the same, and that a sale is deemed expedient; shall fix the time, place, terms, and manner of sale; and shall reserve the right to reject any and all bids.

Source: Laws 1911, c. 17, § 2, p. 134; R.S.1913, § 5178; C.S.1922, § 4365; C.S.1929, § 17-563; R.S.1943, § 17-569; Laws 2017, LB133, § 195.

17-570 Abandoned real estate; sale; notice.

No sale under section 17-569 shall be had until at least thirty days' notice shall have been given by publication in a legal newspaper in or of general circulation in the city or village.

Source: Laws 1911, c. 17, § 3, p. 134; R.S.1913, § 5179; C.S.1922, § 4366; C.S.1929, § 17-564; R.S.1943, § 17-570; Laws 2017, LB133, § 196.

17-571 Abandoned real estate; sale; sealed bids; deed.

Any sale under section 17-569 shall be by sealed bids; and upon approval of the sale by a two-thirds vote of the city council or village board of trustees, the mayor or chairperson of the village board of trustees shall, in the name of the city or village, execute and deliver a deed to the purchaser, which deed shall be attested by the city clerk or village clerk bearing the seal of the city or village.

Source: Laws 1911, c. 17, § 4, p. 134; R.S.1913, § 5180; C.S.1922, § 4367; C.S.1929, § 17-565; R.S.1943, § 17-571; Laws 2017, LB133, § 197.

17-572 Loans to students; conditions.

Cities of the second class and villages may contract with a person including such person's parent or guardian if such person is a minor to loan money to such person while such person pursues a course of study at an accredited college or university leading to a degree of Doctor of Medicine or Doctor of Dental Surgery in consideration for such person's promise to practice medicine or dentistry in such city or village and repay such city or village for such money loaned during such person's study after such person shall have become established in his or her practice, and upon such other terms and conditions as the city council or village board of trustees may determine are warranted in the premises. If such person shall discontinue his or her course of study before attaining such degree or fail to practice in such city or village after attaining such degree and a license to practice medicine or dentistry, such city or village may pursue any remedy it may have against such person or his or her parent or guardian as in any other commercial transaction.

Source: Laws 1971, LB 497, § 1; Laws 2017, LB133, § 198.

17-573 Litter; removal; notice; action by city or village.

Each city of the second class and village may, by ordinance, prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village or within its extraterritorial zoning jurisdiction

and require the removal of such litter so as to abate any nuisance. If the owner fails to remove such litter, after five days' notice by publication and by certified mail, the city or village shall remove the litter or cause it to be removed and shall assess the cost of removal against the property so benefited as provided by ordinance.

Source: Laws 1975, LB 117, § 2; Laws 2015, LB266, § 9; R.S.Supp.,2016, § 17-123.01; Laws 2017, LB133, § 309.

17-574 Sewerage and drainage; districts; regulation.

The mayor and city council of any city of the second class, or the board of trustees of any village, are hereby authorized to lay off such city or village and the territory within the extraterritorial zoning jurisdiction of such city or village into suitable districts for the purpose of establishing a system of sewerage and drainage. Such city or village may (1) provide such system; (2) regulate the construction, repairs, and use of sewers and drains and of all proper house connections and branches; (3) compel all proper connections therewith and branches from other streets, avenues, and alleys, and from private property; and (4) provide penalties for any obstruction of or injury to any sewer or part of such sewer or failure to make connections with such system.

Source: Laws 1903, c. 22, § 1, p. 254; R.S.1913, § 5043; C.S.1922, § 4212; C.S.1929, § 17-151; R.S.1943, § 17-149; Laws 1949, c. 22, § 1(1), p. 94; Laws 1979, LB 136, § 2; R.S.1943, (2012), § 17-149; Laws 2017, LB133, § 310.

17-575 Sewerage and drainage; failure of property owner to connect; notice; cost; special assessment; collection.

If any property owner neglects or fails within a period of ten days after notice has been given to him or her by certified or registered mail or by publication in a legal newspaper published in or of general circulation in a city of the second class or village to make connection with the sewerage system as provided in section 17-574, the governing body of such city or village may cause the connection to be done, assess the cost of such connection against the property as a special assessment, and collect the special assessment in the manner provided for collection of other special assessments.

Source: Laws 1949, c. 22, § 1(2), p. 94; Laws 1987, LB 93, § 4; Laws 2015, LB361, § 28; R.S.Supp.,2016, § 17-149.01; Laws 2017, LB133, § 311.

ARTICLE 6

ELECTIONS, OFFICERS, ORDINANCES

(a) ELECTIONS

Section

- 17-601.01. Caucus; when held; notice.
- 17-601.02. Caucus; notice to village clerk; contents.
- 17-602. Registered voters; qualifications.
- 17-603. Officers; canvass; certificates of election; failure to qualify, effect.

(b) OFFICERS

- 17-604. Officers; powers, duties, and compensation; regulate by ordinance; bond or insurance; premium.
- 17-605. City clerk or village clerk; duties.

Section

- 17-606. Treasurer; duties; failure to file account; penalty.
 17-607. Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.
 17-608. Treasurer; surplus funds; investments authorized; interest.
 17-609. Treasurer; utility funds; retirement of bonds or warrants.
 17-610. City attorney or village attorney; duties.
 17-611. Officer; extra compensation prohibited.
 17-612. Elective officers, salary; increase during term of office prohibited; exception.

(c) ORDINANCES

- 17-613. Ordinances; style; publication; proof.
 17-614. Ordinances; how enacted; title.
 17-615. Ordinances; passage; rules and regulations; proof.
 17-616. Ordinances; contracts; appointments; vote; record.

(a) ELECTIONS

17-601.01 Caucus; when held; notice.

In any village the board of trustees may, by ordinance, call a caucus for the purpose of nomination of candidates for offices to be filled in the village election. Such caucus shall be held at least ten days before the filing deadline for such election, and the village board of trustees shall publish notice of such caucus in at least one legal newspaper in or of general circulation in the village at least once each week for two consecutive weeks before such caucus.

Source: Laws 1971, LB 432, § 1; Laws 1972, LB 1047, § 2; Laws 1993, LB 348, § 2; Laws 2017, LB133, § 199.

17-601.02 Caucus; notice to village clerk; contents.

The chairperson of the caucus at which candidates are nominated under section 17-601.01 shall notify the village clerk in writing of the candidates so nominated, not later than two days following the caucus. The village clerk shall then notify the persons so nominated of their nomination, such notification to take place not later than five days after such caucus. No candidate so nominated shall have his or her name placed upon the ballot unless, not more than ten days after the holding of such caucus, he or she files with the village clerk a written statement accepting the nomination of the caucus and pays the filing fee, if any, for the office for which he or she was nominated.

Source: Laws 1971, LB 432, § 2; Laws 1993, LB 348, § 3; Laws 2017, LB133, § 200.

17-602 Registered voters; qualifications.

All registered voters residing within the corporate limits of any city of the second class or village on or before election day shall be entitled to vote at all city and village elections.

Source: Laws 1879, § 61, p. 208; R.S.1913, § 5144; C.S.1922, § 4319; C.S.1929, § 17-510; R.S.1943, § 17-602; Laws 1963, c. 74, § 1, p. 277; Laws 1973, LB 559, § 8; Laws 1994, LB 76, § 497; Laws 2017, LB133, § 201.

17-603 Officers; canvass; certificates of election; failure to qualify, effect.

At a meeting of the city council of a city of the second class, or the village board of trustees, on the first Monday after any city or village election, the returns, including returns for the election of members of the school board, shall be canvassed, and the city council or village board of trustees shall cause the city clerk or village clerk to make out and deliver certificates of election, under the seal of the city or village, to the persons found to be elected. A neglect of any such elected officer to qualify within ten days after the delivery of such certificate shall be deemed a refusal to accept the office to which he or she may have been elected.

Source: Laws 1879, § 62, p. 208; R.S.1913, § 5145; C.S.1922, § 4320; C.S.1929, § 17-511; R.S.1943, § 17-603; Laws 1951, c. 35, § 1, p. 136; Laws 1959, c. 60, § 56, p. 273; Laws 1994, LB 76, § 498; Laws 2017, LB133, § 202.

(b) OFFICERS

17-604 Officers; powers, duties, and compensation; regulate by ordinance; bond or insurance; premium.

A city of the second class or village may enact ordinances or bylaws to regulate and prescribe the powers, duties, and compensation of officers and to require from all officers, elected or appointed, bonds and security or evidence of equivalent insurance for the faithful performance of their duties. The city or village may pay the premium for such bonds or insurance coverage.

Source: Laws 1879, § 69, XIII, p. 214; Laws 1881, c. 23, § 8, XIII, p. 176; Laws 1885, c. 20, § 1, XIII, p. 166; Laws 1887, c. 12, § 1, XIII, p. 295; R.S.1913, § 5146; C.S.1922, § 4321; C.S.1929, § 17-512; R.S.1943, § 17-604; Laws 1965, c. 68, § 1, p. 288; Laws 2007, LB347, § 12; Laws 2017, LB133, § 203.

17-605 City clerk or village clerk; duties.

The city clerk or village clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the city council of a city of the second class or village board of trustees. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city clerk or village clerk may transfer such journal of the proceedings of the city council or village board of trustees to the State Archives of the Nebraska State Historical Society for permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city or village.

Source: Laws 1879, § 63, p. 208; R.S.1913, § 5147; C.S.1922, § 4322; C.S.1929, § 17-513; R.S.1943, § 17-605; Laws 1973, LB 224, § 5; Laws 2013, LB112, § 3; Laws 2017, LB133, § 204.

Cross References

Records Management Act, see section 84-1220.

17-606 Treasurer; duties; failure to file account; penalty.

(1) The treasurer of each city of the second class or village shall be the custodian of all money belonging to the city or village. He or she shall keep a separate account of each fund or appropriation and the debts and credits

belonging thereto. He or she shall give every person paying money into the treasury a receipt for such money, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the city council or village board of trustees, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the clerk's office. If the city treasurer or village treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the city council or village board of trustees, the mayor of a city of the second class or the chairperson of the village board of trustees with the advice and consent of the trustees may use this failure as cause to remove the city treasurer or village treasurer from office.

(2) The city treasurer or village treasurer shall keep a record of all outstanding bonds against the city or village, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

Source: Laws 1879, § 64, p. 209; R.S.1913, § 5148; C.S.1922, § 4323; C.S.1929, § 17-514; R.S.1943, § 17-606; Laws 2005, LB 528, § 2; Laws 2013, LB112, § 4; Laws 2017, LB133, § 205.

17-607 Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.

(1) The treasurer of a city of the second class or village shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city treasurer or village treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council or village board of trustees for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of the village board of trustees, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(2) The city council or village board of trustees shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (a) a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured or guaranteed by the Federal Deposit Insurance Corporation or, in lieu thereof, (b) security given as provided in the Public Funds Deposit Security Act, to secure the payment of all such deposits and

accretions. The city council or village board of trustees shall approve such bond or giving of security. The city treasurer or village treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

Source: Laws 1879, § 65, p. 209; R.S.1913, § 5149; Laws 1921, c. 304, § 1, p. 961; C.S.1922, § 4324; Laws 1927, c. 38, § 1, p. 168; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 124; Laws 1935, c. 140, § 2, p. 515; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(1), p. 121; R.S.1943, § 17-607; Laws 1957, c. 54, § 3, p. 264; Laws 1989, LB 33, § 22; Laws 1992, LB 757, § 19; Laws 1996, LB 1274, § 22; Laws 2001, LB 362, § 24; Laws 2003, LB 175, § 1; Laws 2009, LB259, § 10; Laws 2017, LB133, § 206.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

17-608 Treasurer; surplus funds; investments authorized; interest.

When the treasurer of any city of the second class or village holds funds of any such city or village in excess of the amount required for maintenance or set aside for betterments and improvements, the mayor and city council or the village board of trustees may, by resolution, direct and authorize the treasurer to invest such surplus funds in the outstanding bonds or registered warrants of such city or village, in bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, or in interest-bearing bonds or the obligations of the United States. The interest on such bonds or warrants shall be credited to the fund out of which such bonds or warrants were purchased.

Source: Laws 1927, c. 38, § 1, p. 169; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 125; Laws 1935, c. 140, § 2, p. 516; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(2), p. 122; R.S.1943, § 17-608; Laws 1959, c. 263, § 6, p. 927; Laws 2017, LB133, § 207.

17-609 Treasurer; utility funds; retirement of bonds or warrants.

The mayor and city council of a city of the second class or village board of trustees may, by resolution, direct and authorize the city treasurer or village treasurer to dispose of the surplus electric light, water, or gas funds, or the funds arising from the sale of electric light, water, or natural gas distribution properties, by the payment of outstanding electric light, water, or gas distribution bonds or water warrants then due. The excess, if any, after such payments may be transferred to the general fund of such city or village.

Source: Laws 1929, c. 45, § 1, p. 194; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 125; Laws 1935, c. 140, § 2, p. 516; Laws 1937, c. 31, § 1, p. 156; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(3), p. 122; R.S.1943, § 17-609; Laws 1967, c. 77, § 1, p. 247; Laws 2017, LB133, § 208.

17-610 City attorney or village attorney; duties.

The city attorney or village attorney shall be the legal advisor of the city council in a city of the second class or village board of trustees. He or she shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the city or village, or that may be ordered by the city council or village board of trustees. When requested, he or she shall attend meetings of the city council or village board of trustees and give them his or her opinion upon any matters submitted to him or her, either orally or in writing, as may be required. He or she shall draft or review for legal correctness ordinances, contracts, franchises, and other instruments as may be required, and he or she shall perform such other duties as may be imposed upon him or her by general law or ordinance. The city council or village board of trustees of the city or village shall have the right to pay the city or village attorney compensation for legal services performed by him or her for such city or village on such terms as the city council or village board of trustees and attorney may agree, and to employ additional legal assistance and to pay for such legal assistance out of the funds of the city or village.

Source: Laws 1879, § 67, p. 210; R.S.1913, § 5150; C.S.1922, § 4325; C.S.1929, § 17-516; R.S.1943, § 17-610; Laws 1969, c. 94, § 1, p. 461; Laws 2017, LB133, § 209.

17-611 Officer; extra compensation prohibited.

No officer shall receive any pay or perquisites from a city of the second class or village other than his or her salary. Neither the city council nor village board of trustees shall pay or appropriate any money or other valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such municipality.

Source: Laws 1879, § 68, p. 210; R.S.1913, § 5151; C.S.1922, § 4326; C.S.1929, § 17-517; R.S.1943, § 17-611; Laws 1957, c. 38, § 3, p. 208; Laws 1959, c. 62, § 2, p. 280; Laws 1961, c. 283, § 3, p. 831; Laws 1971, LB 494, § 4; Laws 1971, LB 549, § 1; Laws 1983, LB 370, § 8; Laws 2017, LB133, § 210.

17-612 Elective officers, salary; increase during term of office prohibited; exception.

The salary of any elective officer in a city of the second class or village shall not be increased or diminished during the term for which he or she has been elected except when there has been a combination and merger of offices as provided by sections 17-108.02 and 17-209.02, and except that when there are officers elected to the city council or a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who resigned or vacated any office shall be eligible for the same office during the time for which he or she was elected if during the same time the salary was increased.

Source: Laws 1879, § 75, p. 220; R.S.1913, § 5152; C.S.1922, § 4327; C.S.1929, § 17-518; R.S.1943, § 17-612; Laws 1945, c. 25, § 3, p. 136; Laws 1969, c. 89, § 3, p. 452; Laws 1972, LB 942, § 1; Laws 2017, LB133, § 211.

(c) ORDINANCES

17-613 Ordinances; style; publication; proof.

The style of all ordinances of a city of the second class or village shall be: Be it ordained by the mayor and city council of the city of, or the chairperson and board of trustees of the village of All ordinances of a general nature shall, before they take effect, be published, within fifteen days after they are passed, (1) in a legal newspaper in or of general circulation in such city or village or (2) by publishing the same in book or pamphlet form. In case of riot, infectious or contagious diseases, or other impending danger, failure of public utility, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor or chairperson of the village board of trustees, posted in at least three of the most public places in the city or village. Such emergency ordinance shall recite the emergency, be passed by a three-fourths vote of the city council or village board of trustees, and be entered of record on the minutes of the city or village. The passage, approval, and publication of all ordinances shall be sufficiently proved by a certificate under seal of the city or village from the city clerk or village clerk, showing that such ordinance was passed and approved and when and in what legal newspaper the ordinance was published. When ordinances are printed in book or pamphlet form, purporting to be published by authority of the village board of trustees or city council, the ordinance need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1879, § 59, p. 207; Laws 1881, c. 23, § 7, p. 171; R.S.1913, § 5153; C.S.1922, § 4328; C.S.1929, § 17-519; R.S.1943, § 17-613; Laws 1951, c. 36, § 1, p. 137; Laws 1969, c. 95, § 1, p. 462; Laws 1971, LB 282, § 2; Laws 2017, LB133, § 212.

Cross References

For other provisions applicable to ordinances, see sections 18-131, 18-132, 18-1724, and 19-3701.

17-614 Ordinances; how enacted; title.

(1) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the city council in a city of the second class or village board of trustees. The mayor of a city of the second class may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the city council or village board of trustees vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory or the redrawing of boundaries for city council or village board of trustees election districts or wards. In case such requirement is suspended, the ordinances shall be read by title and then moved for final passage. Three-fourths of the city council or village board of trustees may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

(2) Ordinances shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section of such ordinance shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city of the second class or village, the title need only state that the ordinance revises all the ordinances of the city or village. Under such title all the ordinances may be revised in sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1879, § 79, p. 223; R.S.1913, § 5154; C.S.1922, § 4329; Laws 1929, c. 47, § 1, p. 202; C.S.1929, § 17-520; R.S.1943, § 17-614; Laws 1969, c. 108, § 3, p. 510; Laws 1972, LB 1235, § 2; Laws 1994, LB 630, § 3; Laws 2001, LB 484, § 2; Laws 2003, LB 365, § 2; Laws 2013, LB113, § 2; Laws 2017, LB133, § 213; Laws 2018, LB865, § 4.
Effective date July 19, 2018.

17-615 Ordinances; passage; rules and regulations; proof.

All ordinances of a city of the second class or village shall be passed pursuant to such rules and regulations as the city council or village board of trustees may provide. All such ordinances may be proved by the certificate of the city clerk or village clerk, under the seal of the city or village.

Source: Laws 1879, § 69, XXX, p. 217; Laws 1881, c. 23, § 8, XXX, p. 185; Laws 1885, c. 20, § 1, XXX, p. 176; Laws 1887, c. 12, § 1, XXX, p. 305; R.S.1913, § 5155; C.S.1922, § 4330; C.S.1929, § 17-521; R.S.1943, § 17-615; Laws 2017, LB133, § 214.

17-616 Ordinances; contracts; appointments; vote; record.

On the passage or adoption of every bylaw or ordinance, and every resolution or order to enter into a contract by the city council of a city of the second class or village board of trustees, the yeas and nays shall be called and recorded. To pass or adopt any bylaw, any ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the city council or village board of trustees shall be required. All appointments of the officers by the city council or village board of trustees shall be made *viva voce*; and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. The requirements of a roll call or *viva voce* vote shall be satisfied by a city or village which utilizes an electronic voting device which allows the

years and days of each city council member or member of the village board of trustees to be readily seen by the public.

Source: Laws 1879, § 76, p. 221; R.S.1913, § 5156; C.S.1922, § 4331; C.S.1929, § 17-522; R.S.1943, § 17-616; Laws 1978, LB 609, § 2; Laws 2017, LB133, § 215.

ARTICLE 7 FISCAL MANAGEMENT

Section

- 17-701. Fiscal year; commencement.
- 17-702. Property tax; general levy authorized; sale for delinquent taxes; additional levies.
- 17-703. Special assessments; relevy or reassess tax limit; refunding; when authorized; how paid.
- 17-706. Annual appropriation bill; contents.
- 17-708. Funds; expenditure; appropriation condition precedent.
- 17-709. Contracts; appropriation condition precedent.
- 17-710. Special assessments; expenditure; limitations.
- 17-711. Warrants; how executed.
- 17-713. Road tax; amount; when authorized.
- 17-714. Claims and accounts payable; filing; requirements; disallowance; notice; costs.
- 17-715. Claims; allowance; payment.
- 17-718. Voluntary fire departments; maintenance; tax; limitation.
- 17-720. Certificates of deposit; time deposits; security required.

17-701 Fiscal year; commencement.

The fiscal year of each city of the second class and village and of any public utility of a city of the second class or village commences on October 1 and extends through the following September 30 except as provided in the Municipal Proprietary Function Act.

Source: Laws 1879, § 85, p. 225; R.S.1913, § 5181; C.S.1922, § 4368; Laws 1927, c. 46, § 1, p. 194; C.S.1929, § 17-566; R.S.1943, § 17-701; Laws 1967, c. 78, § 1, p. 248; Laws 1969, c. 257, § 12, p. 937; Laws 1995, LB 194, § 5; Laws 2017, LB133, § 216.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

17-702 Property tax; general levy authorized; sale for delinquent taxes; additional levies.

(1) The city council or village board of trustees of each city of the second class or village shall, at the time and in the manner provided by law, cause to be certified to the county clerk the amount of tax to be levied upon the taxable value of all the taxable property of the city or village which the city or village requires for the purposes of the adopted budget statement for the ensuing year, including all special assessments and taxes assessed as provided by law. The county clerk shall place the same on the property tax lists to be collected in the manner provided by law for the collection of county taxes in the county where such city or village is situated. In all sales for any delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or a lien on the same property, the sale shall be for all the delinquent taxes. Such sales and all sales made under or by virtue of this section or the provision of law herein referred to shall be of the same validity and in all

respects be deemed and treated as though such sales had been made for the delinquent county taxes exclusively. Subject to section 77-3442, the maximum amount of tax which may be so certified, assessed, and collected shall not require a tax levy in excess of one dollar and five cents on each one hundred dollars upon the taxable value of all the taxable property within the corporate limits of such city or village for the purposes of the adopted budget statement, together with any special assessments or special taxes or amounts assessed as taxes and such sum as may be authorized by law for the payment of outstanding bonds and debts.

(2) Within the limitation of section 77-3442, the city council or village board of trustees of each city of the second class or village may certify an amount to be levied not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property within such city or village for the purpose of establishing the sinking fund or funds authorized by sections 19-1301 to 19-1304. Nothing contained in subsection (1) or (2) of this section shall be construed to authorize an increase in the amount of levies for any specific municipal purpose or purposes elsewhere limited by law, whether limited in specific sums or by tax levies.

(3) When required by section 18-501, an additional levy of seven cents on each one hundred dollars upon the taxable value of all the taxable property within the city of the second class or village may be imposed.

Source: Laws 1879, § 82, p. 224; R.S.1913, § 5182; Laws 1915, c. 93, § 1, p. 235; Laws 1919, c. 61, § 2, p. 149; C.S.1922, § 4369; C.S.1929, § 17-567; Laws 1933, c. 30, § 1, p. 208; Laws 1937, c. 176, § 6, p. 697; Laws 1939, c. 12, § 6, p. 84; Laws 1941, c. 157, § 21, p. 623; C.S.Supp.,1941, § 17-567; R.S.1943, § 17-702; Laws 1945, c. 28, § 2, p. 140; Laws 1945, c. 29, § 2, p. 144; Laws 1953, c. 287, § 18, p. 940; Laws 1957, c. 39, § 2, p. 211; Laws 1965, c. 69, § 1, p. 289; Laws 1967, c. 79, § 1, p. 251; Laws 1969, c. 145, § 19, p. 683; Laws 1979, LB 187, § 55; Laws 1992, LB 719A, § 56; Laws 1996, LB 1114, § 31; Laws 2017, LB133, § 217.

17-703 Special assessments; relevy or reassess tax limit; refunding; when authorized; how paid.

(1) Whenever any special assessment upon any lot or lots, lands, or parcels of land in any city of the second class or village is found to be invalid and uncollectible, is adjudged to be void by a court of competent jurisdiction, or is paid under protest and recovered by suit, because of any defect, irregularity, or invalidity in any of the proceedings or on account of the failure to observe and comply with any of the conditions, prerequisites, and requirements of any statute or ordinance, the mayor and city council or chairperson and village board of trustees may relevy or reassess the special assessment upon the lot or lots, lands, or parcels of land in the same manner as other special assessments are levied, without regard to whether the formalities, prerequisites, or conditions prior to equalization have been had or not.

(2) If any city of the second class or village has levied special assessments for part or all of the cost of any public work or improvement, if the assessments have been finally held by the courts to be invalid and unenforceable, if the defects rendering such assessments invalid and unenforceable are of such character that they cannot be remedied by reassessment, and if part of the

special assessments has been paid under mistake of law or fact into such city or village prior to such final holding, the mayor and city council or chairperson and village board of trustees shall establish a special fund in the budget statement annually which is sufficient to refund and repay over a period of consecutive years such special assessments erroneously paid, without interest to the person or persons entitled to receive the same, any and all such assessments or parts thereof as may have been so paid into the treasury of such city or village, as the case may be. The amount of tax annually budgeted for this special fund shall not require a tax levy in excess of ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year, and the additional levy shall be continued only for as many years as may be necessary to raise the total amount required for such purpose. Such assessments shall be refunded out of the special fund upon proper claims filed by the person or persons entitled to reimbursement. Such claim shall be audited, allowed, and ordered paid in the same manner as other claims against such city or village. All such reimbursements shall be made pro rata if there is not sufficient money on hand to repay them all at one time. Such amount of tax for the special fund shall be specified in the adopted budget statement.

Source: Laws 1933, c. 30, § 1, p. 209; Laws 1937, c. 176, § 6, p. 698; Laws 1939, c. 12, § 6, p. 85; Laws 1941, c. 157, § 21, p. 624; C.S.Supp.,1941, § 17-567; R.S.1943, § 17-703; Laws 1945, c. 28, § 3, p. 141; Laws 1945, c. 29, § 3, p. 145; Laws 1953, c. 287, § 19, p. 941; Laws 1969, c. 145, § 20, p. 685; Laws 1979, LB 187, § 56; Laws 1992, LB 719A, § 57; Laws 2017, LB133, § 218; Laws 2017, LB317, § 1.

17-706 Annual appropriation bill; contents.

The city council of a city of the second class and the village board of trustees shall adopt a budget statement pursuant to the Nebraska Budget Act, to be termed "The Annual Appropriation Bill", in which the city or village may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such municipality.

Source: Laws 1879, § 86, p. 225; R.S.1913, § 5184; C.S.1922, § 4371; C.S.1929, § 17-569; R.S.1943, § 17-706; Laws 1967, c. 78, § 2, p. 249; Laws 1972, LB 1423, § 1; Laws 1993, LB 734, § 26; Laws 1995, LB 194, § 6; Laws 2017, LB133, § 219.

Cross References

Nebraska Budget Act, see section 13-501.

17-708 Funds; expenditure; appropriation condition precedent.

The mayor and city council of a city of the second class or village board of trustees shall have no power to appropriate or to issue or draw any order or warrant on the city treasurer or village treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of sections 17-714 and 17-715, and funds for the class or object out

of which such claim is payable have been included in the adopted budget statement or transferred according to law.

Source: Laws 1879, § 88, p. 226; R.S.1913, § 5186; C.S.1922, § 4373; C.S.1929, § 17-571; Laws 1935, Spec. Sess., c. 10, § 10, p. 77; Laws 1941, c. 130, § 18, p. 502; C.S.Supp.,1941, § 17-571; R.S. 1943, § 17-708; Laws 1959, c. 63, § 2, p. 283; Laws 1961, c. 47, § 3, p. 185; Laws 1967, c. 78, § 3, p. 249; Laws 1969, c. 145, § 21, p. 685; Laws 1972, LB 1423, § 2; Laws 2017, LB133, § 220.

17-709 Contracts; appropriation condition precedent.

No contract shall be made by the city council of a city of the second class or village board of trustees or any committee or member of such city council or village board of trustees, and no expense shall be incurred by any of the officers or departments of the municipality, whether the object of the expenditures shall have been ordered by the city council or village board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided in section 17-708.

Source: Laws 1879, § 89, p. 227; R.S.1913, § 5187; C.S.1922, § 4374; C.S.1929, § 17-572; R.S.1943, § 17-709; Laws 1967, c. 78, § 4, p. 251; Laws 2017, LB133, § 221.

17-710 Special assessments; expenditure; limitations.

All money received on special assessments shall be held by the city treasurer of a city of the second class or village treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and such money shall be used for no other purpose whatever, unless to reimburse such municipality for money expended for such improvement.

Source: Laws 1879, § 90, p. 227; R.S.1913, § 5188; C.S.1922, § 4375; C.S.1929, § 17-573; R.S.1943, § 17-710; Laws 2017, LB133, § 222.

17-711 Warrants; how executed.

All warrants drawn upon the city treasurer of a city of the second class or village treasurer must be signed by the mayor or chairperson of the village board of trustees and countersigned by the city clerk or village clerk, stating the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount included in the adopted budget statement for such fund upon which it is drawn and the amount already expended of such fund.

Source: Laws 1879, § 66, p. 210; R.S.1913, § 5190; C.S.1922, § 4380; C.S.1929, § 17-578; R.S.1943, § 17-711; Laws 1969, c. 145, § 22, p. 686; Laws 2017, LB133, § 223.

17-713 Road tax; amount; when authorized.

The city council or village board of trustees of a city of the second class or village shall, upon petition being filed with the city clerk or village clerk signed by a majority of the resident property owners of such city or village requesting

such city council or village board of trustees to levy a tax upon the taxable valuation of the property in the city or village, make a levy as in such petition requested, not exceeding eighty-seven and five-tenths cents on each one hundred dollars of taxable valuation, and shall certify the same to the county board as other taxes are levied by the city or village, or certified, for the purpose of creating a fund. The fund shall be expended solely in the improvement of the public highways adjacent to the city or village and within five miles of such city or village, shall at all times be under the control and direction of the city council or village board of trustees, and shall be expended under the authority and direction of the city council or village board of trustees. The city council or village board of trustees is hereby granted the power and authority to employ such person or persons as it may select for the performance of such work under such rules and regulations as it may by ordinance provide.

Source: Laws 1905, c. 32, § 1, p. 263; R.S.1913, § 5191; C.S.1922, § 4381; Laws 1925, c. 166, § 5, p. 438; C.S.1929, § 17-579; R.S.1943, § 17-713; Laws 1979, LB 187, § 57; Laws 1992, LB 719A, § 58; Laws 2017, LB133, § 224.

17-714 Claims and accounts payable; filing; requirements; disallowance; notice; costs.

(1) All liquidated and unliquidated claims and accounts payable against a city of the second class or village shall (a) be presented in writing, (b) state the name and address of the claimant and the amount of the claim, and (c) fully and accurately identify the items or services for which payment is claimed or the time, place, nature, and circumstances giving rise to the claim.

(2) As a condition precedent to maintaining an action for a claim, other than a tort claim as defined in section 13-903, the claimant shall file such claim within ninety days of the accrual of the claim in the office of the city clerk or village clerk.

(3) The city clerk or village clerk shall notify the claimant or his or her agent or attorney by letter mailed to the claimant's address within five days if the claim is disallowed by the city council or village board of trustees.

(4) No costs shall be recovered against such city or village in any action brought against it for any claim or for any claim allowed in part which has not been presented to the city council or village board of trustees to be audited, unless the recovery is for a greater sum than the amount allowed with the interest due.

Source: Laws 1879, § 80, p. 223; R.S.1913, § 5192; C.S.1922, § 4382; C.S.1929, § 17-580; R.S.1943, § 17-714; Laws 1955, c. 42, § 1, p. 157; Laws 1990, LB 1044, § 2; Laws 2017, LB133, § 225.

17-715 Claims; allowance; payment.

Upon the allowance of claims by the city council of a city of the second class or village board of trustees, the order for their payment shall specify the particular fund or appropriation out of which they are payable as specified in the adopted budget statement; and no order or warrant shall be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment. In the event there exists at the time such warrant is drawn, obligated funds from the federal government or the State of Nebras-

ka, or both from the federal government and the State of Nebraska, for the general purpose or purposes of such warrant, then such warrant may be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn to the additional extent of one hundred percent of such obligated federal or state funds. No claim shall be audited or allowed unless an order or warrant for the payment thereof may legally be drawn.

Source: Laws 1879, § 81, p. 223; Laws 1885, c. 18, § 1, p. 160; R.S.1913, § 5193; C.S.1922, § 4383; C.S.1929, § 17-581; R.S.1943, § 17-715; Laws 1969, c. 145, § 23, p. 686; Laws 1972, LB 693, § 1; Laws 2017, LB133, § 226.

17-718 Voluntary fire departments; maintenance; tax; limitation.

The city council in cities of the second class and board of trustees in villages having only voluntary fire departments or companies may levy a tax annually of not more than seven cents on each one hundred dollars upon the taxable value of all the taxable property within such cities or villages for the maintenance and benefit of such fire departments or companies. The amount of such tax shall be established at the beginning of the year and shall be included in the adopted budget statement. Upon collection of such tax, the city treasurer or village treasurer shall disburse the same upon the order of the chief of the fire department with the approval of the city council or village board of trustees.

Source: Laws 1921, c. 198, § 1, p. 720; C.S.1922, § 4391; C.S.1929, § 17-589; R.S.1943, § 17-718; Laws 1947, c. 38, § 1, p. 150; Laws 1953, c. 287, § 21, p. 943; Laws 1969, c. 96, § 1, p. 464; Laws 1969, c. 145, § 24, p. 687; Laws 1979, LB 187, § 58; Laws 1992, LB 719A, § 59; Laws 2017, LB133, § 227.

17-720 Certificates of deposit; time deposits; security required.

The city treasurer or village treasurer of cities of the second class and villages may, upon resolution of the mayor and city council or village board of trustees authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in the State of Nebraska to the extent that such certificates of deposit or time deposits are insured or guaranteed by the Federal Deposit Insurance Corporation. Deposits may be made in excess of the amounts so secured by the municipality, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as is provided for cities of the first class in sections 16-714 to 16-716 as of the time the deposit is made. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1969, c. 84, § 1, p. 424; Laws 1987, LB 440, § 8; Laws 1990, LB 825, § 1; Laws 1993, LB 157, § 3; Laws 1996, LB 1274, § 23; Laws 2001, LB 362, § 25; Laws 2009, LB259, § 11; Laws 2017, LB133, § 228.

ARTICLE 8

BOARD OF PUBLIC WORKS IN CITIES OF THE SECOND CLASS

Section

17-801. Board of public works; how created; members; appointment; removal; qualifications; terms.

Section

- 17-802. Board of public works; powers and duties; city council; approve budget.
- 17-802.01. Board of public works; insurance plan; cooperation and participation.
- 17-803. Board of public works; surplus funds; investment.
- 17-804. Water commissioner and light commissioner; compensation; removal.
- 17-805. Board of public works; organization; meetings; records.
- 17-806. Board members; oath; bond.
- 17-807. Board members; interest in contracts prohibited.
- 17-808. Bookkeeper and city clerk.
- 17-810. Rates; power to fix.

17-801 Board of public works; how created; members; appointment; removal; qualifications; terms.

Whenever any city of the second class has or is about to establish or acquire any system of waterworks, power plant, ice plant, gas plant, sewerage, heating, or lighting plant, or distribution system, the city council of such city may, by ordinance, create a board of public works, which shall consist of not less than three, nor more than six members, residents of such city, to be appointed by the mayor, subject to the approval of the city council. Members of the board of public works may be removed by the mayor and a majority of the members elected to the city council at any time. The term of the first members of the board of public works shall be one, two, three, or four years in the manner designated by the mayor, as the case may be, after which the term of each member shall be four years; and the terms of not more than two members shall expire at any one time.

Source: Laws 1935, c. 33, § 1, p. 138; C.S.Supp.,1941, § 17-701; R.S. 1943, § 17-801; Laws 1975, LB 162, § 1; Laws 2017, LB133, § 229.

17-802 Board of public works; powers and duties; city council; approve budget.

The city council of a city of the second class may, by ordinance, confer upon a board of public works the active direction and supervision of any or all of the utility systems owned or operated by such city. The city council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. Such board of public works shall have the power to operate any utility referred to it and to exercise all powers conferred by law upon such city for the operation and government of such utility to the same extent, in the same manner, and under the same restrictions as the city council could do if no such board of public works existed, except that such board of public works shall not make any expenditure or contract any indebtedness other than for ordinary running expenses, exceeding an amount established by the city council, without first obtaining the approval of the city council. The board of public works shall report to the city council at regular intervals as the city council may require.

Source: Laws 1935, c. 33, § 2, p. 139; Laws 1937, c. 34, § 1, p. 160; C.S.Supp.,1941, § 17-702; R.S.1943, § 17-802; Laws 1949, c. 29, § 2(1), p. 113; Laws 1983, LB 304, § 5; Laws 1993, LB 734, § 27; Laws 2017, LB133, § 230.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

17-802.01 Board of public works; insurance plan; cooperation and participation.

The mayor and city council of a city of the second class may, by ordinance, authorize and empower the board of public works to cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the board of public works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance.

Source: Laws 1949, c. 29, § 2(2), p. 113; Laws 2017, LB133, § 231.

17-803 Board of public works; surplus funds; investment.

Any surplus funds arising out of the operation of any municipal utilities by the board of public works, or by the city council of a city of the second class, where any of such utilities are not being operated by such a board, may be invested, if not invested pursuant to the provisions of any other law upon the subject, in like manner and subject to the same conditions as the investment of similar funds of cities of the first class, as provided in section 16-691.01.

Source: Laws 1937, c. 34, § 1, p. 160; C.S.Supp.,1941, § 17-702; R.S. 1943, § 17-803; Laws 1959, c. 51, § 1, p. 242; Laws 1961, c. 47, § 5, p. 187; Laws 2017, LB133, § 232.

17-804 Water commissioner and light commissioner; compensation; removal.

If a city of the second class has created a board of public works as provided in section 17-801, the water commissioner and light commissioner shall, subject to confirmation by the mayor and city council, be employed by such board at such reasonable compensation as may be agreed upon at the time of such employment and shall thereafter be under the jurisdiction of such board, any of the provisions of sections 17-501 to 17-560 to the contrary notwithstanding. Any water commissioner or light commissioner, under the jurisdiction and control of the board of public works, may be removed by the board, after an opportunity to be heard before the mayor and city council if he or she shall so request, for malfeasance, misfeasance, or neglect in office.

Source: Laws 1935, c. 33, § 2, p. 139; Laws 1937, c. 34, § 1, p. 161; C.S.Supp.,1941, § 17-702; R.S.1943, § 17-804; Laws 2017, LB133, § 233.

17-805 Board of public works; organization; meetings; records.

The members of the board of public works in a city of the second class shall organize as soon as practicable after their appointment, by electing a chairperson and secretary, who shall serve until the first meeting in June next following; and thereafter such board shall elect a chairperson and secretary at the first meeting in June each year. In the absence of the regular officers, temporary officers to serve in their places may be chosen by the members present at any meeting. The board of public works shall establish regular times for meetings and may adopt such rules as may be necessary or desirable for the conduct of business. The board of public works shall keep a record of its proceedings and, if there is a legal newspaper in or of general circulation in the city of the

second class, shall publish the minutes of each meeting in such legal newspaper within thirty days after the meeting is held.

Source: Laws 1935, c. 33, § 3, p. 139; C.S.Supp.,1941, § 17-703; R.S. 1943, § 17-805; Laws 2017, LB133, § 234.

17-806 Board members; oath; bond.

Each of the members of a board of public works of a city of the second class shall take an oath to discharge faithfully the duties of his or her office before entering upon the discharge of such office. Each of the members of such board before entering upon the duties of his or her office shall be required to give bond to the city with corporate surety. Such bond shall be in the sum of five thousand dollars and shall be conditioned for the faithful performance of the duties of member of the board of public works; and the surety on such bond shall be approved by the mayor and city council and shall be filed with the city treasurer. The premium on such bond shall be paid out of any public utility fund designated by the mayor and city council.

Source: Laws 1935, c. 33, § 4, p. 140; C.S.Supp.,1941, § 17-704; R.S. 1943, § 17-806; Laws 2017, LB133, § 235.

17-807 Board members; interest in contracts prohibited.

No member of the board of public works of a city of the second class shall ever be financially interested, directly or indirectly, in any contract entered into by the board on behalf of the city for more than ten thousand dollars in one year.

Source: Laws 1935, c. 33, § 5, p. 140; C.S.Supp.,1941, § 17-705; R.S. 1943, § 17-807; Laws 1973, LB 24, § 3; Laws 2017, LB133, § 236.

17-808 Bookkeeper and city clerk.

If the board of public works determines that the best interests of the city of the second class and the patrons of the utility will be better or more economically served, the board may employ the duly elected city clerk as ex officio bookkeeper and collector for the utility or utilities, and he or she may be paid a reasonable salary for the extra services required of him or her in such position in addition to his or her salary as city clerk.

Source: Laws 1935, c. 33, § 6, p. 140; C.S.Supp.,1941, § 17-706; R.S. 1943, § 17-808; Laws 2017, LB133, § 237.

17-810 Rates; power to fix.

Rates or charges for service by a board of public works for a city of the second class may be fixed or changed by resolution duly adopted by such board of public works.

Source: Laws 1935, c. 33, § 8, p. 140; C.S.Supp.,1941, § 17-708; R.S. 1943, § 17-810; Laws 2017, LB133, § 238.

CITIES OF THE SECOND CLASS AND VILLAGES

ARTICLE 9

PARTICULAR MUNICIPAL ENTERPRISES

(a) PUBLIC UTILITIES SERVICE

Section

- 17-903. Utilities; contracts for service; approval of electors; bonds; interest; taxes.
- 17-905. Utilities; acquisition; revenue bonds; issuance; when authorized.
- 17-905.01. Gas distribution system or bottled gas plant; lease by city; terms; submission to election.
- 17-906. Power plant; construction; eminent domain; procedure.
- 17-907. Power plant; transmission lines; right-of-way.
- 17-908. Power plant; construction; election; bonds; interest; redemption.
- 17-909. Power plant; operation and extension; tax authorized.
- 17-910. Joint power plant; construction; approval of electors.
- 17-911. Joint power plant; bonds; election; interest.
- 17-912. Joint power plant; operation and extension; tax.

(b) SEWERAGE SYSTEM

- 17-913. Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.
- 17-914. Sewers; resolution to construct; publication; hearing.
- 17-915. Repealed. Laws 2017, LB133, § 331.
- 17-916. Sewers; resolution to construct; petition in opposition; effect.
- 17-917. Sewers; resolution to construct, purchase, or acquire; vote required.
- 17-918. Sewers; construction; contracts; notice; bids; acceptance.
- 17-919. Sewers; acceptance by engineer; approval; cost; assessments; notice.
- 17-920. Sewers; assessments; hearing; equalization; payable in installments; interest.
- 17-921. Sewers; special assessments; levy; collection.
- 17-922. Sewers; assessments; interest; exempt property; cost; how paid.
- 17-923. Sewers; assessments; when due; interest.
- 17-924. Sewers; assessments; sinking fund; purpose.
- 17-925. Sewers; bonds; term; rate of interest; partial payments; final payment; contractor; interest; special assessments; tax authorized.
- 17-925.01. Sewers; water utilities; maintenance and repair; tax authorized; service rate in lieu of tax; lien.
- 17-925.02. Sewers; rental charges; collection.
- 17-925.03. Sewers; rental charges; reduction in taxes.
- 17-925.04. Sewers; rental charges; cumulative to service rate for maintenance and repair.

(c) CEMETERIES

- 17-926. Cemetery; acquisition; condemnation; procedure.
- 17-933. Cemetery; acquisition; title.
- 17-934. Cemetery; existing cemetery association; transfer to; conditions.
- 17-935. Existing cemetery association; transfer; deeds; how executed.
- 17-936. Existing cemetery association; transfer of funds.
- 17-937. Existing cemetery association; trustees; oath; bond; vacancy; how filled.
- 17-938. Cemetery; maintenance; tax; forfeiture of lot; resale; reclamation of lot; procedure.
- 17-939. Cemetery; acquisition; bonds; interest; approval of electors required.
- 17-940. Cemetery; improvement.
- 17-941. Cemetery; lots; conveyance.
- 17-942. Cemetery; lots; ownership and use; regulations.
- 17-943. Cemetery; protection; rules and regulations.
- 17-944. Cemetery association; formation; when authorized.
- 17-945. Cemetery association; trustees; conveyances.
- 17-946. Cemetery association; powers of board of trustees; income; use.
- 17-947. Cemetery association; formation; funds; transfer to.

Section

(d) RECREATION CENTERS

- 17-948. Recreation and conservation; real estate; acquisition by gift or purchase; title.
- 17-949. Recreation and conservation; real estate; regulation and control; penalties authorized.
- 17-950. Recreation and conservation; real estate; acquisition; purposes; bonds; interest; approval of electors required.
- 17-951. Facilities; maintenance and improvement; tax authorized.
- 17-952. Board of commissioners; members; duties.

(e) PUBLIC BUILDINGS

- 17-953. Public buildings; acquisition or construction; approval of electors required; exception.
- 17-953.01. Purchase or construction of public buildings without bond issue; remonstrance petition; procedure.
- 17-954. Public buildings; purchase or construction; bonds; approval of electors required; exception.
- 17-955. Public buildings; maintenance; tax.

(f) REFRIGERATION

- 17-957. Cold storage plants; construction; cost; tax; bonds.
- 17-958. Cold storage plants; bonds; approval of electors; interest; redemption.
- 17-959. Cold storage plants; operation and extension; tax.
- 17-960. Cold storage plants; management; rates.

(g) MEDICAL AND HOUSING FACILITIES

- 17-962. Gift or devise; approval by city council or village board of trustees.
- 17-963. Facility; acquisition or construction; issuance of bonds; interest; election.
- 17-964. Facility; maintenance; tax.
- 17-965. Facility fund; established; custodian.
- 17-966. Facility board; members; duties; powers; warrants.

(h) LIBRARIES

- 17-967. Bonds; city of the second class or village; municipal library; issuance; interest; conditions; limitations; tax levy.
- 17-968. Bonds; issuance; record.
- 17-969. Bonds; sinking fund; interest; levy.

(i) WATER SERVICE DISTRICT

- 17-970. Water service districts; establishment; ordinance.
- 17-971. Water service districts; improvements; protest; effect; special assessments.
- 17-972. Water service districts; failure to comply with regulation or make connection; effect; special assessment.
- 17-973. Water service district; assessments; lien; date due; payable.
- 17-974. Water service district; assessments; delinquent; interest; rate; payment.
- 17-976. Water service districts; cost of improvements; bonds; interest; issuance; tax; levy.

(a) PUBLIC UTILITIES SERVICE

17-903 Utilities; contracts for service; approval of electors; bonds; interest; taxes.

Before any city of the second class or village shall make any contract with any person or corporation within or without such city or village for the furnishing of electricity, power, steam, or other product to such city or village, or any such municipal plant within such city or village, the question shall be submitted to the electors voting at any regular or special election upon the proposition. Such city of the second class or village may, by a majority vote at such election, vote bonds or taxes for the purpose of defraying the cost of such

transmission line and connection with any person, firm, corporation, or other city or village with which it may enter into a contract for the purchasing of electricity, power, steam, or other product. The question of issuing bonds for any of the purposes provided in this section shall be submitted to the electors at an election held for that purpose, after not less than twenty days' notice thereof shall have been given by publication in a legal newspaper in or of general circulation in such municipality. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. Such bonds shall bear interest, payable annually or semiannually, and shall be payable any time the municipality may determine at the time of their issuance, but in not more than twenty years after their issuance. The city council or village board of trustees shall levy annually a sufficient tax to maintain, operate, and extend any system or plant and to provide for the payment of the interest on, and the principal of, any bonds that may have been issued as provided in this section. If no tax or issuance of bonds is required, any city of the second class or village may by resolution of the city council or village board of trustees contract for the furnishing of electricity at retail to such city or village, or to any electric plant within such city or village, with any public power district, or an electric cooperative which cooperative has an approved retail service area adjoining such city or village.

Source: Laws 1917, c. 104, § 1, p. 275; Laws 1919, c. 49, § 1, p. 143; C.S.1922, § 4317; C.S.1929, § 17-508; R.S.1943, § 17-903; Laws 1965, c. 58, § 4, p. 268; Laws 1969, c. 83, § 4, p. 420; Laws 1969, c. 51, § 49, p. 302; Laws 2017, LB133, § 239.

17-905 Utilities; acquisition; revenue bonds; issuance; when authorized.

Supplemental to any existing law on the subject and in lieu of the issuance of general obligation bonds, or the levying of taxes upon property, as by law provided, any city of the second class or any village may construct, purchase, or otherwise acquire a waterworks plant or a water system, or a gas plant or a gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, either within or without the corporate limits of the city or village, and real and personal property needed or useful in connection therewith, and pay the cost thereof by pledging and hypothecating the revenue and earnings of any waterworks plant or water system, or gas plant or gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by the city or village. In the exercise of the authority granted in this section, the city or village may issue and sell revenue bonds or debentures and enter into such contracts in connection therewith as may be proper and necessary. Such revenue bonds or debentures shall be a lien only upon the revenue and earnings of the waterworks plant or water system, gas plant or gas system, including a natural or bottled gas plant, gas distribution system, or gas pipelines, owned or to be owned by the city or village. No such city or village shall pledge or hypothecate the revenue and earnings of any waterworks plant or water system, or gas plant or gas system, including a natural or bottled gas plant, gas distribution system or gas pipelines, nor issue revenue bonds or debentures, as authorized in this section, until the proposition relating thereto has been submitted in the usual manner to the qualified voters of such city or village at a general or special election and approved by a majority of the electors voting on the proposition submitted. Such proposition shall be submitted, whenever requested, within thirty days after a sufficient petition signed by

the qualified voters of such city or village equal in number to twenty percent of the vote cast at the last general municipal election held in such city or village is filed with the city clerk or village clerk, as the case may be. Three weeks' notice of the submission of the proposition shall be given by publication in a legal newspaper in or of general circulation in such city or village. The requirement for a vote of the electors shall not apply when such city or village seeks to pledge or hypothecate such revenue or earnings or issue revenue bonds or debentures solely for the maintenance, extension, or enlargement of any water-works plant or water system, or any gas plant or any gas system, including a natural or bottled gas plant, a gas distribution system, or gas pipelines, owned by such city or village.

Source: Laws 1941, c. 22, § 2, p. 113; C.S.Supp.,1941, § 17-596; R.S. 1943, § 17-905; Laws 2017, LB133, § 240.

17-905.01 Gas distribution system or bottled gas plant; lease by city; terms; submission to election.

Any city of the second class or any village which constructs a gas distribution system, or purchases or otherwise acquires a bottled gas plant, within the corporate limits of the city or village as provided in section 17-905, may lease any such facility or facilities to any such person, persons, corporation, or corporations as the city council or village board of trustees may select, upon such terms and conditions as it shall deem advisable. If there are any revenue bonds outstanding or to be outstanding at the time the lease becomes effective, for which the revenue and earnings of such facility or facilities are or shall be pledged and hypothecated, the net lease payments shall be sufficient to pay the principal and interest on such revenue bonds as the same become due. Such proposition shall be first submitted to the qualified voters of such city of the second class or village in the manner set forth in section 17-905, to be submitted either independently of or in conjunction with the proposition set forth in section 17-905.

Source: Laws 1963, c. 69, § 1, p. 270; Laws 2017, LB133, § 241.

17-906 Power plant; construction; eminent domain; procedure.

Any city of the second class or village is hereby authorized and empowered to erect a power plant, electric or other light works outside the corporate limits of such city or village and to acquire real estate required for such power plant, electric or other light works. Such city or village in establishing and erecting such power plant, electric or other light works shall have the right to purchase or take private property for the purpose of erecting such power plant, electric or other light works and constructing, running, and extending its transmission line. In all cases such city or village shall pay to such person or persons whose property shall be taken or injured thereby such compensation therefor as may be agreed upon or as shall be allowed by lawful condemnation proceedings. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 are applicable.

Source: Laws 1921, c. 192, § 1, p. 711; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-906; Laws 1951, c. 101, § 59, p. 474; Laws 2017, LB133, § 242.

17-907 Power plant; transmission lines; right-of-way.

A city of the second class or village is hereby given, for the purpose of erecting and operating a power plant, electric or other light works as provided in section 17-906, a right-of-way over and the right to erect and maintain transmission lines upon, within, and across any of the public highways of the state, subject to sections 75-709 to 75-724.

Source: Laws 1921, c. 192, § 1, p. 711; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-907; Laws 1992, LB 866, § 1; Laws 2017, LB133, § 243.

17-908 Power plant; construction; election; bonds; interest; redemption.

Before any city of the second class or village makes any contract with any person or corporation relating in any manner whatever to the erection of a proposed power plant, electric or other light works as provided in section 17-906, the question as to whether such power plant, electric or other light works shall be erected shall be duly submitted to the electors voting at any regular or special election upon the proposition, and such city of the second class or village may by a majority of the votes cast at such election vote bonds in an amount not in excess of seven percent of the taxable valuation of such city or village for the purpose of defraying the cost of such plant. The question of issuing such bonds shall be submitted to the electors at an election held for that purpose after not less than thirty days' notice thereof has been given by publication in a legal newspaper in or of general circulation in such city or village. Such bonds shall bear interest, payable annually or semiannually, and shall be payable any time the city or village may determine at the time of their issuance but in not more than twenty years after their issuance. The city or village shall have the option of paying any or all of such bonds at any time after five years from their date.

Source: Laws 1921, c. 192, § 1, p. 712; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-908; Laws 1969, c. 51, § 50, p. 304; Laws 1971, LB 534, § 15; Laws 1992, LB 719A, § 60; Laws 2017, LB133, § 244.

17-909 Power plant; operation and extension; tax authorized.

The city council or village board of trustees of a city of the second class or village shall levy annually a sufficient tax to maintain, operate, and extend any power plant, electric or other light works as provided in section 17-906 and to provide for the payment of the interest on the principal of any bonds that may have been issued as provided in section 17-908.

Source: Laws 1921, c. 192, § 1, p. 712; C.S.1922, § 4394; C.S.1929, § 17-601; R.S.1943, § 17-909; Laws 2017, LB133, § 245.

17-910 Joint power plant; construction; approval of electors.

Two or more cities of the second class or villages may jointly erect a power plant, electric or other light works as provided in section 17-906 which shall serve such respective cities or villages, and such power plant, electric or other light works may be owned and operated jointly by such respective cities or villages. Such cities or villages shall have the same rights and privileges as are in sections 17-906 to 17-909 granted to any single city or village. Before such

cities or villages shall make any contract with any person or corporation relating in any manner whatever to the erection of such proposed power plant, electric or other light works, the question as to whether such jointly owned and operated power plant, electric or other light works shall be erected shall first be duly submitted to the electors of the respective cities or villages contemplating the erection of such power plant, electric or other light works and be approved by a sixty percent majority of the voters in each of such cities or villages in the manner provided in section 17-908.

Source: Laws 1921, c. 192, § 2, p. 712; C.S.1922, § 4395; C.S.1929, § 17-602; R.S.1943, § 17-910; Laws 2017, LB133, § 246.

17-911 Joint power plant; bonds; election; interest.

Cities of the second class or villages contemplating the erection of a joint power plant, electric or other light works under section 17-910 may vote joint bonds in an amount not in excess of seven percent of the valuation of such cities or villages for the purpose of defraying the cost of such power plant, electric or other light works. The question of issuing such joint bonds for the purpose contemplated shall be submitted to the electors of the respective cities or villages interested at an election held for that purpose in each of such cities or villages after notice of such election for not less than twenty days shall have been given by publication in the manner provided in section 17-908. Such bonds may be issued only when a majority of the electors in each of the cities or villages interested and voting on the question favor their issuance. If in any one of such cities or villages voting on such question a majority of the electors voting in such city or village shall fail to favor the issuance of such joint bonds then the entire election in all of the cities or villages voting shall be deemed void and of no effect. Such joint bonds shall bear interest payable annually or semiannually and shall be payable any time the cities or villages may determine at the time of their issuance, but in not more than twenty years after their issuance, with the option of paying any or all of such bonds at any time after five years from their date.

Source: Laws 1921, c. 192, § 2, p. 713; C.S.1922, § 4395; C.S.1929, § 17-602; R.S.1943, § 17-911; Laws 1969, c. 51, § 51, p. 304; Laws 1971, LB 534, § 16; Laws 2017, LB133, § 247.

17-912 Joint power plant; operation and extension; tax.

The city councils or village boards of trustees of the cities of the second class or villages issuing joint bonds under section 17-911 shall levy annually a sufficient tax to maintain and operate and extend the power plant, electric or other light work and to provide for the payment of interest on, and principal of, any bonds that may have been issued as provided in section 17-911.

Source: Laws 1921, c. 192, § 2, p. 713; C.S.1922, § 4395; C.S.1929, § 17-602; R.S.1943, § 17-912; Laws 2017, LB133, § 248.

(b) SEWERAGE SYSTEM

17-913 Sewers; resolution to construct, purchase, or acquire; contents; estimate of cost; special assessment.

When the city council of any city of the second class or the village board of trustees deems it advisable or necessary to build, reconstruct, purchase, or

otherwise acquire a sanitary sewer system, a sanitary or storm water sewer, a sewage disposal plant, or pumping stations or sewer outlets for any such city or village, constructed or to be constructed in whole or in part inside or outside of such city or village, it shall declare the advisability and necessity for such system, sewer, plant, station, or outlet in a proposed resolution, which, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, and shall state the size or sizes and kinds of sewers proposed to be constructed, and shall designate the location and terminal points thereof. If it is proposed to construct disposal plants, pumping stations, or outlet sewers, the resolution shall refer to the plans and specifications which shall have been made and filed before the publication of such resolution by the city engineer or village engineer or by the engineer who has been employed by any such city or village for such purpose. If it is proposed to purchase or otherwise acquire a sanitary sewer system, a sanitary or storm water sewer, a sewage disposal plant, or pumping stations or sewer outlets, the resolution shall state the price and conditions of the purchase or how the system, sewer, plant, station, or outlet is being acquired. Such engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost. The city council or village board of trustees may assess, to the extent of special benefits, the cost of such portions of the improvements as are local improvements, upon properties found specially benefited thereby as a special assessment. The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1919, c. 189, § 1, p. 427; Laws 1921, c. 281, § 1, p. 926; C.S.1922, § 4337; Laws 1923, c. 143, § 1, p. 355; C.S.1929, § 17-528; R.S.1943, § 17-913; Laws 1947, c. 39, § 1, p. 151; Laws 2015, LB361, § 36; Laws 2017, LB133, § 249.

17-914 Sewers; resolution to construct; publication; hearing.

Notice of the time when any resolution under section 17-913 shall be set for consideration before the city council or village board of trustees shall be given by at least two publications in a legal newspaper in or of general circulation in the city or village, which publication shall contain the entire wording of the resolution. The last publication shall be not less than five days nor more than two weeks prior to the time set for hearing of objections to the passage of any such resolution, at which hearing the owners of the property which might become subject to assessment for the contemplated improvement may appear and make objections to the proposed improvement. Following the publication, the resolution may be amended and passed or passed as proposed.

Source: Laws 1919, c. 189, § 1, p. 428; C.S.1922, § 4338; C.S.1929, § 17-529; R.S.1943, § 17-914; Laws 2017, LB133, § 250.

17-915 Repealed. Laws 2017, LB133, § 331.

17-916 Sewers; resolution to construct; petition in opposition; effect.

If a petition opposing a resolution proposed under section 17-913, signed by property owners representing a majority of the front footage which may become subject to assessment for the cost in any proposed lateral sewer district, be filed with the city clerk or village clerk within three days before the date of

the meeting for the hearing on such resolution, such resolution shall not be passed.

Source: Laws 1919, c. 189, § 4, p. 428; C.S.1922, § 4340; C.S.1929, § 17-531; R.S.1943, § 17-916; Laws 2017, LB133, § 251.

17-917 Sewers; resolution to construct, purchase, or acquire; vote required.

Upon compliance with sections 17-913 to 17-916, the city council or village board of trustees may by resolution order the making, reconstruction, purchase, or otherwise acquiring of any of the improvements provided for in section 17-913. The vote upon any such resolution shall be as required by section 17-616.

Source: Laws 1919, c. 189, § 5, p. 429; C.S.1922, § 4341; C.S.1929, § 17-532; R.S.1943, § 17-917; Laws 1947, c. 39, § 2, p. 152; Laws 2017, LB133, § 252.

17-918 Sewers; construction; contracts; notice; bids; acceptance.

After ordering any improvements as provided for in section 17-917, the city council or village board of trustees may enter into a contract for the construction of such improvements in one or more contracts, but no work shall be done or contract let until notice to contractors has been published in a legal newspaper in or of general circulation in such city or village. The notice shall be published in at least two issues of such newspaper and shall state the extent of the work, and the kinds of material to be bid upon, including in such notice all kinds of material mentioned in the resolution specified in section 17-913, the amount of the engineer's estimate of the cost of such improvements, and the time when bids will be received. The work shall be done under written contract with the lowest responsible bidder on the material selected after the bids are opened and in accordance with the requirements of the plans and specifications. The city council or village board of trustees may reject any or all bids received and advertise for new bids in accordance with this section.

Source: Laws 1919, c. 189, § 6, p. 429; Laws 1921, c. 281, § 2, p. 926; C.S.1922, § 4342; C.S.1929, § 17-533; R.S.1943, § 17-918; Laws 1975, LB 112, § 3; Laws 2017, LB133, § 253.

17-919 Sewers; acceptance by engineer; approval; cost; assessments; notice.

After the completion of any work or purchase or otherwise acquiring the improvements authorized pursuant to section 17-913, the engineer shall file with the city clerk or village clerk a certificate of acceptance, which acceptance shall be approved by the city council or village board of trustees by resolution. The city council or village board of trustees shall then require the engineer to make a complete statement of all the costs of any such improvement and a plat of the property in the district and a schedule of the amount proposed to be assessed against each separate piece of property in such district, which shall be filed with the city clerk or village clerk within ten days from date of acceptance of the work, purchase, or otherwise acquiring the system. The city council or village board of trustees shall then order the city clerk or village clerk to give notice that such plat and schedules are on file in his or her office and that all objections thereto, or to prior proceedings on account of errors, irregularities, or inequalities, not made in writing and filed with the city clerk or village clerk within twenty days after the first publication of such notice, shall be deemed to

have been waived. Such notice shall be given by two publications in a legal newspaper in or of general circulation in such city or village. Such notice shall state the time and place where objections, filed as provided for in this section, shall be considered by the city council or village board of trustees.

Source: Laws 1919, c. 189, § 7, p. 430; C.S.1922, § 4343; C.S.1929, § 17-534; R.S.1943, § 17-919; Laws 1947, c. 39, § 3, p. 152; Laws 1963, c. 75, § 1, p. 278; Laws 2017, LB133, § 254.

17-920 Sewers; assessments; hearing; equalization; payable in installments; interest.

The hearing on the proposed assessment under section 17-919 shall be held by the city council or village board of trustees, sitting as a board of adjustment and equalization, at the time specified in the notice which shall be not less than twenty days nor more than thirty days after the date of first publication unless adjourned. Such session may be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits. If any special assessment be payable in installments, each installment shall draw interest payable semiannually or annually from the date of levy until due. Such delinquent installments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid.

Source: Laws 1919, c. 189, § 8, p. 430; C.S.1922, § 4344; C.S.1929, § 17-535; Laws 1935, c. 136, § 21, p. 534; C.S.Supp.,1941, § 17-535; R.S.1943, § 17-920; Laws 1949, c. 27, § 1, p. 100; Laws 1957, c. 34, § 1, p. 198; Laws 1959, c. 64, § 4, p. 288; Laws 1969, c. 51, § 52, p. 305; Laws 1980, LB 933, § 19; Laws 1981, LB 167, § 20; Laws 2017, LB133, § 255.

17-921 Sewers; special assessments; levy; collection.

After the equalization of special assessments as required by section 17-920, the special assessments shall be levied by the mayor and city council or the village board of trustees, upon all lots or parcels of ground within the district specified which are benefited by reason of the improvement. The special assessments may be relieved if, for any reason, the levy thereof is void or not enforceable and in an amount not exceeding the previous levy. Such levy shall be enforced as a special assessment, and any payments thereof under previous levies shall be credited to the person or property making the same. All special assessments made for such purposes shall be collected in the same manner as other special assessments.

Source: Laws 1919, c. 189, § 9, p. 430; C.S.1922, § 4345; C.S.1929, § 17-536; R.S.1943, § 17-921; Laws 2015, LB361, § 37; Laws 2017, LB133, § 256.

17-922 Sewers; assessments; interest; exempt property; cost; how paid.

No city council or village board of trustees shall cause to be assessed for any of the improvements authorized pursuant to section 17-913, property by law not assessable, or property not included within the district defined in the preliminary resolution, and shall not assess property not benefited. The cost of sewers at the intersection of streets and alleys and opposite property belonging

to the United States Government, or other property not assessable, may be included with the cost of the rest of the work and may be assessed on the property within the district, if benefited by the improvement to such extent, or may be paid from unappropriated money in the general fund. The cost of the improvements shall draw interest from the date of acceptance thereof by the city council or village board of trustees.

Source: Laws 1919, c. 189, § 10, p. 431; C.S.1922, § 4346; C.S.1929, § 17-537; R.S.1943, § 17-922; Laws 1969, c. 51, § 53, p. 305; Laws 2017, LB133, § 257.

17-923 Sewers; assessments; when due; interest.

All special assessments provided for in section 17-921 shall become due in fifty days after the date of the levy and may be paid within that time without interest, but if not so paid they shall bear interest thereafter until delinquent. Such assessment shall become delinquent in equal annual installments over such period of years as the city council or village board of trustees may determine at the time of making the levy. Delinquent installments shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, until paid and shall be collected in the usual manner for the collection of taxes.

Source: Laws 1919, c. 189, § 11, p. 431; C.S.1922, § 4347; Laws 1923, c. 143, § 2, p. 356; C.S.1929, § 17-538; R.S.1943, § 17-923; Laws 1949, c. 27, § 2, p. 100; Laws 1953, c. 35, § 1, p. 126; Laws 1959, c. 64, § 5, p. 288; Laws 1969, c. 51, § 54, p. 306; Laws 1980, LB 933, § 20; Laws 1981, LB 167, § 21; Laws 2017, LB133, § 258.

17-924 Sewers; assessments; sinking fund; purpose.

All the special assessments provided for in section 17-921 shall, when levied, constitute a sinking fund for the purpose of paying the cost of the improvements authorized pursuant to section 17-913 with allowable interest thereon, and shall be solely and strictly applied to such purpose to the extent required. Any excess assessments may be transferred to such other fund or funds as the city council or village board of trustees may deem advisable after fully discharging the purposes for which they were levied.

Source: Laws 1919, c. 189, § 13, p. 432; C.S.1922, § 4349; C.S.1929, § 17-539; R.S.1943, § 17-924; Laws 2017, LB133, § 259.

17-925 Sewers; bonds; term; rate of interest; partial payments; final payment; contractor; interest; special assessments; tax authorized.

For the purpose of paying the cost of the improvements authorized pursuant to section 17-913, the city council of any city of the second class or village board of trustees of any village, after such improvements have been completed and accepted, shall have the power to issue negotiable bonds of such city or village, to be called Sewer Bonds, payable in not exceeding twenty years and bearing interest payable annually or semiannually, which may either be sold by the city or village or delivered to the contractor in payment for the work, but in either case for not less than their par value. For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and city council or by the village board of trustees upon certificates of the engineer in charge showing the amount of work completed and materials necessarily

purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost of such project and upon the completion and acceptance of the work issue a final warrant for a balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold. The city or village shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the governing body and running until the date that the warrant is tendered to the contractor. All special assessments which may be levied upon property specially benefited by such work or improvements shall, when collected, be set aside and constitute a sinking fund for the payment of the interest and principal of such bonds. There shall be levied annually upon all the taxable property in such city or village a tax, which, together with such sinking fund derived from special assessments, shall be sufficient to meet payments of interest and principal as the same become due. Such tax shall be known as the sewer tax and shall be payable annually in money.

Source: Laws 1919, c. 189, § 14, p. 432; C.S.1922, § 4350; C.S.1929, § 17-540; Laws 1931, c. 34, § 1, p. 126; Laws 1935, c. 35, § 1, p. 146; C.S.Supp.,1941, § 17-540; R.S.1943, § 17-925; Laws 1963, c. 70, § 2, p. 272; Laws 1969, c. 51, § 55, p. 306; Laws 1974, LB 636, § 4; Laws 2017, LB133, § 260.

17-925.01 Sewers; water utilities; maintenance and repair; tax authorized; service rate in lieu of tax; lien.

The mayor and city council of any city of the second class or the village board of trustees is hereby authorized, after the establishment of a system of sewerage and at the time of levying other taxes for city or village purposes, to levy a tax of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village for the purpose of creating a fund to be used for the maintenance and repairing of any sewer or water utilities in such city or village. In lieu of the levy of such tax, the mayor and city council or the village board of trustees may establish by ordinance such rates for such sewer service as may be deemed to be fair and reasonable, to be collected from either the owner or the person, firm, or corporation requesting the services at such times, either monthly, quarterly, or otherwise, as may be specified in the ordinance. All sewer charges shall be a lien upon the premises or real estate for which the same is used or supplied. Such lien shall be enforced in such manner as the city council or village board of trustees provides by ordinance. The charges thus made when collected shall be placed either in a separate fund or in a combined water and sewer fund and used exclusively for the purpose of maintenance and repairs of the sewer system, or the water and sewer system, in such city or village.

Source: Laws 1903, c. 22, § 9, p. 258; R.S.1913, § 5048; C.S.1922, § 4217; Laws 1923, c. 188, § 1, p. 432; C.S.1929, § 17-156; Laws 1943, c. 33, § 2, p. 151; R.S.1943, § 17-925.01; Laws 1947, c. 51, § 2, p. 172; Laws 1951, c. 37, § 1, p. 138; Laws 1953, c. 287, § 22, p. 944; Laws 1979, LB 187, § 59; Laws 1992, LB 719A, § 61; Laws 1997, LB 67, § 1; Laws 2017, LB133, § 261.

17-925.02 Sewers; rental charges; collection.

Any city of the second class or village may make rental charges for the use of an established municipal sewerage system on a fair and impartial basis for services rendered. Such rental charges shall be collected at the same time and in the same manner as water charges by the same city or village.

Source: Laws 1947, c. 43, § 1, p. 159; Laws 2017, LB133, § 262.

17-925.03 Sewers; rental charges; reduction in taxes.

The revenue from rental charges under section 17-925.02 shall only be used for the abatement or the reduction of ad valorem taxes being levied or to be levied for the payment of bonds outstanding or to be issued for the construction of or additions to the sewerage system described in section 17-925.02.

Source: Laws 1947, c. 43, § 2, p. 159; Laws 2017, LB133, § 263.

17-925.04 Sewers; rental charges; cumulative to service rate for maintenance and repair.

The charges permitted by sections 17-925.02 to 17-925.04 shall be in addition to the charges permitted by section 17-925.01 for the maintenance and repair of a sewer system.

Source: Laws 1947, c. 43, § 3, p. 159; Laws 2017, LB133, § 264.

(c) CEMETERIES

17-926 Cemetery; acquisition; condemnation; procedure.

Any city of the second class or village through its mayor and city council or village board of trustees may, by eminent domain, condemn, purchase, hold, and pay for land not exceeding one hundred sixty acres outside the corporate limits of any city of the second class or village for the purpose of the burial of the dead. The mayor and city council or chairperson and village board of trustees are also empowered and authorized to receive by gift or devise real estate for cemetery purposes. In the event any city of the second class or village through its mayor and city council or chairperson and village board of trustees desires to purchase any cemetery belonging to any corporation, partnership, limited liability company, association, or individual, which cemetery has already been properly surveyed and platted, and is used for cemetery purposes, then the mayor and city council or chairperson and village board of trustees are hereby authorized and empowered to purchase the cemetery. In the event the owner or owners of such cemetery desired to be purchased by any city of the second class or village will not or cannot sell and convey such cemetery to the city or village or in the event the owner or owners of such cemetery cannot agree upon the price to be paid for the cemetery, the mayor and city council or the village board of trustees shall by resolution declare the necessity for the acquisition of such cemetery by exercise of the power of eminent domain. The adoption of the resolution shall be deemed conclusive evidence of such necessity. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1929, c. 46, § 1, p. 195; C.S.1929, § 17-541; R.S.1943, § 17-926; Laws 1951, c. 101, § 60, p. 474; Laws 1963, c. 70, § 3, p. 273; Laws 1993, LB 121, § 136; Laws 2017, LB133, § 265.

17-933 Cemetery; acquisition; title.

Where real estate for a cemetery under section 17-926 is acquired by gift or devise, the title shall vest in the city or village upon the conditions imposed by the donor and upon acceptance by the mayor and city council or chairperson and village board of trustees. Where such real estate is acquired by purchase or by virtue of exercise of the right of eminent domain, the title shall vest absolutely in such city or village. Nothing in sections 17-933 to 17-937 shall be construed in any manner to affect cemeteries belonging to any religious organization or society, lodge, or fraternal society.

Source: Laws 1929, c. 46, § 8, p. 197; C.S.1929, § 17-548; R.S.1943, § 17-933; Laws 2017, LB133, § 266.

17-934 Cemetery; existing cemetery association; transfer to; conditions.

In any city of the second class or village in which there exists a duly perfected cemetery association as defined in section 12-501, if the cemetery association proposes to the mayor and city council or to the chairperson and village board of trustees by means of a resolution duly enacted by such cemetery association, signed by its president and attested by its secretary, signifying the willingness of the cemetery association to exercise control and management of any cemetery belonging to such city or village, then the mayor and city council or chairperson and village board of trustees shall submit at the next regular municipal election the question of the management and control over the cemetery under the conveyance made by the proper authorities of such city or village. If a majority of the votes cast at such election are in favor of the transfer of the management and control of the cemetery belonging to such city or village to the cemetery association, the management and control of such cemetery shall be relinquished forthwith by the proper authorities of such city or village to the cemetery association. If the real estate of the cemetery of such city or village has been acquired by gift or devise, the relinquishment of the management and control to the cemetery association shall be subject to the conditions imposed by the donor; and upon acceptance by the president and secretary of the cemetery association, the conditions shall be binding upon the cemetery association.

Source: Laws 1929, c. 46, § 8, p. 198; C.S.1929, § 17-548; R.S.1943, § 17-934; Laws 2014, LB863, § 13; Laws 2017, LB133, § 267.

17-935 Existing cemetery association; transfer; deeds; how executed.

Subsequent to the relinquishment by the mayor and city council of a city of the second class or the chairperson and village board of trustees of a village to the proper officers of a cemetery association, as provided in section 17-934, the deeds to all burial lots executed by the trustees of such cemetery association, through its president and secretary, shall as a matter of course be signed, sealed, acknowledged, and delivered by the proper officers of such city or village as other real property of such city or village is conveyed, except that the transfer of such burial lots shall not require a vote of a majority of the electors of such city or village to make title to the same valid and legal in the purchaser or purchasers thereof.

Source: Laws 1929, c. 46, § 8, p. 198; C.S.1929, § 17-548; R.S.1943, § 17-935; Laws 2017, LB133, § 268.

17-936 Existing cemetery association; transfer of funds.

In case of the transfer of the management and control of a city cemetery or a village cemetery, as provided in sections 17-934 and 17-935, the cemetery board erected under section 12-401 shall have no jurisdiction over the management and control of such cemetery after the transfer. In the event of such transfer, any funds or any money to the credit of the cemetery fund or any perpetual fund created under section 12-402 shall be paid over by the city treasurer of such city or by the village treasurer of such village to the treasurer of the cemetery association; and all endowments contemplated under section 12-301 to such city cemetery or village cemetery shall vest absolutely in the cemetery association to whom the control and management of such cemetery shall have been transferred.

Source: Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548; R.S.1943, § 17-936; Laws 1959, c. 49, § 3, p. 239; Laws 2009, LB500, § 3; Laws 2017, LB133, § 269.

17-937 Existing cemetery association; trustees; oath; bond; vacancy; how filled.

In the case of the transfer of the management and control of a city cemetery or village cemetery as provided in sections 17-934 and 17-935, each of the trustees of the cemetery association shall qualify by subscribing to an oath in the office of the city clerk or village clerk, as the case may be, substantially as follows: That he or she will faithfully, impartially, and honestly perform his or her duties as such trustee. Whenever the trustees of any cemetery association organized under sections 17-926 to 17-939 shall receive the gift of any property, real or personal, in trust, for the perpetual care of such cemetery, or anything connected therewith, such trustees shall, upon the enactment of bylaws by the association to that effect, require the treasurer of such association to give a bond to such association in a sum equal to the amount of such trust fund and other personal property, conditioned for the faithful administration of such trust and for the care of such funds and property. Such bonds shall be approved by the mayor of the city or by the chairperson of the village board of trustees and shall remain on file with and in the custody of the city clerk or the village clerk. The premium on the bond of the treasurer shall be paid from available cemetery funds credited to or in the hands of such cemetery association. In the event of a vacancy occurring among the members of the board of trustees of such cemetery association, such vacancy shall be filled in the like manner as the original member of such board of trustees was elected in accordance with the provisions of section 12-501. Each trustee elected to fill such vacancy shall subscribe to the oath as provided in this section. Such appointment to fill such vacancy shall continue until the successor of such trustee shall be duly elected and qualified.

Source: Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548; R.S.1943, § 17-937; Laws 2017, LB133, § 270.

17-938 Cemetery; maintenance; tax; forfeiture of lot; resale; reclamation of lot; procedure.

(1) The mayor and city council or the village board of trustees of a city of the second class or village are hereby empowered to levy a tax not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all

taxable property in such city or village for any one year for improving, adorning, protecting, and caring for a cemetery as provided in section 17-926.

(2) Except as provided in subsection (3) of this section, all certificates to any lot or lots upon which no interments have been made and which have been sold for burial purposes under the provisions of section 17-941 may be declared forfeited and subject to resale if, for more than three consecutive years, all charges and liens as provided under sections 17-926 to 17-947 or by any of the rules, regulations, or bylaws of the association are not promptly paid by the holders of such certificates. All certificates to any lot or lots sold shall contain a forfeiture clause to the effect that if no interment has been made on the lot or lots and all liens and charges have not been paid as provided in this subsection, by ordinance, or in the bylaws of the association, such certificate and the rights under the same may, at the option of the cemetery board, with the approval of the mayor and city council or of the chairperson and village board of trustees, be declared null and void and the lot or lots shall be subject to resale as in the first instance.

(3) When any lot has been transferred by warranty deed or by a deed conveying a fee simple title, but there has been no burial in any such lot or subdivision thereof and no payment of annual assessments for a period of three years, the cemetery board, with the approval of the mayor and city council or of the chairperson and village board of trustees, may reclaim the unused portion of such lot or subdivision after notifying the record owner or his or her heirs or assigns, if known, by certified mail and publishing notice of its intention to do so. Such notice shall be published once each week for four weeks in a legal newspaper in or of general circulation throughout the county in which the cemetery is located, shall describe the lot or subdivision proposed to be reclaimed, and shall be addressed to the person in whose name such portion stands of record or, if there is no owner of record, to all persons claiming any interest in such lot or subdivision. If no person appears to claim such lot or subdivision and pay all delinquent assessments with interest within fifteen days after the last date of such publication, the cemetery board may by resolution reclaim such lot or subdivision. Such reclamation shall be complete upon a filing of a verified copy of such resolution, together with proof of publication, in the office of the register of deeds.

Source: Laws 1929, c. 46, § 9, p. 200; C.S.1929, § 17-549; R.S.1943, § 17-938; Laws 1953, c. 287, § 23, p. 944; Laws 1955, c. 43, § 1, p. 158; Laws 1971, LB 38, § 1; Laws 1979, LB 249, § 1; Laws 1979, LB 187, § 60; Laws 1980, LB 599, § 7; Laws 1986, LB 808, § 1; Laws 1992, LB 719A, § 62; Laws 2017, LB133, § 271.

17-939 Cemetery; acquisition; bonds; interest; approval of electors required.

The mayor and city council of any city of the second class or the village board of trustees of any village is hereby authorized to issue bonds in a sum not exceeding ten thousand dollars for the purpose of acquiring title by purchase or by virtue of eminent domain to land used for cemetery purposes and that may be acquired for any necessary addition to any existing cemetery. No such bonds shall be issued until the question of issuing the same shall be submitted to the electors of any such city or village at a general election thereof, or at a special election called for the purpose of submitting the proposition of issuing such bonds, and unless at such election a majority of the electors voting on the

proposition shall have voted in favor of issuing such bonds. Such bonds shall be payable in not exceeding ten years from date and shall bear interest payable annually or semiannually. Notice of such election shall be given by publication in a legal newspaper in or of general circulation in the city or village for three successive weeks, the final publication to be not more than ten days prior to the date of such election. The election shall be governed by the Election Act.

Source: Laws 1929, c. 46, § 10, p. 200; C.S.1929, § 17-550; R.S.1943, § 17-939; Laws 1969, c. 51, § 56, p. 307; Laws 1971, LB 534, § 17; Laws 1996, LB 299, § 14; Laws 2017, LB133, § 272.

Cross References

Election Act, see section 32-101.

17-940 Cemetery; improvement.

The mayor and city council of a city of the second class or village board of trustees may survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading to any cemetery owned by such city or village. Such city or village may construct walks and protect ornamental trees therein and provide for paying the expenses thereof.

Source: Laws 1879, § 69, XXXIII, p. 218; Laws 1881, c. 23, § 8, XXXIII, p. 186; Laws 1885, c. 20, § 1, XXXIII, p. 177; Laws 1887, c. 12, § 1, XXXIII, p. 305; R.S.1913, § 5167; C.S.1922, § 4354; C.S. 1929, § 17-552; R.S.1943, § 17-940; Laws 2017, LB133, § 273.

17-941 Cemetery; lots; conveyance.

The mayor and city council of a city of the second class or village board of trustees may convey cemetery lots by certificate signed by the mayor or chairperson of the village board of trustees, and countersigned by the city clerk or village clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulation of the city council or village board of trustees.

Source: Laws 1879, § 69, XXXIV, p. 218; Laws 1881, c. 23, § 8, XXXIV, p. 186; Laws 1885, c. 20, § 1, XXXIV, p. 177; Laws 1887, c. 12, § 1, XXXIV, p. 306; R.S.1913, § 5168; C.S.1922, § 4355; C.S.1929, § 17-553; R.S.1943, § 17-941; Laws 1971, LB 32, § 4; Laws 2015, LB241, § 3; Laws 2017, LB133, § 274.

17-942 Cemetery; lots; ownership and use; regulations.

The mayor and city council of a city of the second class or village board of trustees may limit the number of cemetery lots which shall be owned by the same person at the same time. The city or village may prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots and may prohibit any diversion of the use of such lots and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots.

Source: Laws 1879, § 69, XXXV, p. 218; Laws 1881, c. 23, § 8, XXXV, p. 187; Laws 1885, c. 20, § 1, XXXV, p. 178; Laws 1887, c. 12, § 1, XXXV, p. 306; R.S.1913, § 5169; C.S.1922, § 4356; C.S.1929, § 17-554; R.S.1943, § 17-942; Laws 2017, LB133, § 275.

17-943 Cemetery; protection; rules and regulations.

The mayor and city council of a city of the second class or village board of trustees may pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting, and governing the cemetery, the owners of lots, visitors, and trespassers. The officers of such city or village shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the municipality itself.

Source: Laws 1879, § 69, XXXVI, p. 218; Laws 1881, c. 23, § 8, XXXVI, p. 187; Laws 1885, c. 20, § 1, XXXVI, p. 178; Laws 1887, c. 12, § 1, XXXVI, p. 306; R.S.1913, § 5170; C.S.1922, § 4357; C.S.1929, § 17-555; R.S.1943, § 17-943; Laws 2017, LB133, § 276.

17-944 Cemetery association; formation; when authorized.

Whenever, in cities of the second class and villages, one-fifth of the resident lot owners of any cemetery under the control of such city or village shall so desire it, it shall be lawful for such lot owners to associate themselves into and form a cemetery association as defined in section 12-501.

Source: Laws 1887, c. 15, § 1, p. 330; R.S.1913, § 5171; C.S.1922, § 4358; C.S.1929, § 17-556; R.S.1943, § 17-944; Laws 2014, LB863, § 14.

17-945 Cemetery association; trustees; conveyances.

Upon the formation of a cemetery association under section 17-944, the lot owners in such cemetery shall elect five of their number as trustees, to whom shall be given the general care, management, and supervision of such cemetery. The mayor of the city of the second class or chairperson of the village board of trustees shall, by virtue of his or her office, be a member of the board of trustees of the cemetery association, and it shall be his or her duty to make, execute, and deliver to purchasers of lots deeds for the lots, when requested by the board of trustees of the cemetery association. Such deeds shall be executed under the corporate seal of such city or village, and countersigned by the city clerk or village clerk, specifying that the person to whom such deed is issued is the owner, for the purposes of interment, of the lot or lots described therein by numbers, as laid down on the map or plat of such cemetery. Such deed shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the board of trustees of the cemetery association.

Source: Laws 1887, c. 15, § 2, p. 330; R.S.1913, § 5172; C.S.1922, § 4359; C.S.1929, § 17-557; R.S.1943, § 17-945; Laws 2015, LB241, § 4; Laws 2017, LB133, § 277.

17-946 Cemetery association; powers of board of trustees; income; use.

(1) The board of trustees of a cemetery association formed pursuant to section 17-944 shall have power:

(a) To limit the number of cemetery lots that shall be owned by the same person at the same time;

(b) To prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots;

(c) To prohibit any diversions of the use of such lots, and any improper adornment thereof, but no religious tests shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots; and

(d) To pass rules and ordinances imposing penalties and fines, not exceeding one hundred dollars, regulating, governing, and protecting the cemetery, the owners of lots, visitors, and trespassers.

(2) The officers of a city of the second class or village in which a cemetery association has been formed pursuant to section 17-944 shall have as full jurisdiction and power in the enforcing of rules and ordinances passed pursuant to subsection (1) of this section as though such rules and ordinances related to such city or village itself.

(3) All money received from sale of lots in any such cemetery, or which may come to it by donation, bequest, or otherwise, shall be devoted exclusively to the care, management, adornment, and government of such cemetery itself and shall be expended exclusively for such purposes under the direction of the association's board of trustees, except that in addition, and notwithstanding any provision of Chapter 12, article 5, the principal of the fund that is attributable to money received from the sale of lots, or attributable to money which has come to the fund by donation, bequest, or otherwise that does not prohibit such use, may be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of such principal is so used in any fiscal year and no more than thirty-five percent of such principal is so used in any period of ten consecutive fiscal years.

(4) This section does not limit the use of any money that comes to the city or village by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

Source: Laws 1887, c. 15, §§ 3, 4, 5, p. 331; R.S.1913, §§ 5173, 5174, 5175; C.S.1922, §§ 4360, 4361, 4362; C.S.1929, §§ 17-558, 17-559, 17-560; R.S.1943, § 17-946; Laws 2005, LB 262, § 3; Laws 2017, LB133, § 278.

17-947 Cemetery association; formation; funds; transfer to.

Upon the organization of a cemetery association as provided in section 17-944, all property and money under the control of the city council or village board of trustees shall vest in such cemetery association for the purposes provided for in sections 17-926 to 17-947, and all money in the control of such city council or village board of trustees shall be turned over to the board of trustees of such cemetery association.

Source: Laws 1887, c. 15, § 6, p. 332; R.S.1913, § 5176; C.S.1922, § 4363; C.S.1929, § 17-561; R.S.1943, § 17-947; Laws 2017, LB133, § 279.

(d) RECREATION CENTERS

17-948 Recreation and conservation; real estate; acquisition by gift or purchase; title.

Cities of the second class and villages are empowered and authorized to receive, by gift or devise, and to purchase real estate within or without their

corporate limits, for the purpose of parks, public grounds, swimming pools, or dams, either for recreational or conservational purposes. If such real estate is acquired by gift or devise, the title shall be vested in the city or village, upon the conditions imposed by the donor and upon the acceptance by the mayor and city council or the village board of trustees; and if such real estate is acquired by purchase, the title shall vest absolutely in such city or village.

Source: Laws 1937, c. 35, § 1, p. 162; C.S.Supp.,1941, § 17-590; R.S. 1943, § 17-948; Laws 1969, c. 86, § 3, p. 432; Laws 2017, LB133, § 280.

17-949 Recreation and conservation; real estate; regulation and control; penalties authorized.

Whether the title to real estate under section 17-948 shall be acquired by gift, devise, or purchase, the jurisdiction of the city council, park board, or the village board of trustees shall at once be extended over such real estate; and the city council, park board, or village board of trustees shall have power to enact bylaws, rules, or ordinances for the protection and preservation of any real estate acquired, and to provide rules and regulations for the closing of such park or swimming pool, in whole or in part, to the general public, and charge admission thereto during such closing, either by the municipality or by any person, persons, or corporation leasing the same. The city or village may provide suitable penalties for the violation of such bylaws, rules, or ordinances, and the police power of any such city or village shall be at once extended over the same.

Source: Laws 1937, c. 35, § 2, p. 162; C.S.Supp.,1941, § 17-591; R.S. 1943, § 17-949; Laws 1961, c. 52, § 1, p. 195; Laws 2017, LB133, § 281.

17-950 Recreation and conservation; real estate; acquisition; purposes; bonds; interest; approval of electors required.

The mayor and city council of any city of the second class or the village board of trustees of any village are hereby authorized to issue bonds for the purpose of acquiring title to real estate, as contemplated by sections 17-948 and 17-949, and for the purpose of improving, equipping, and furnishing such real estate as parks and recreational grounds and for the purpose of building swimming pools and dams. No such bonds shall be issued until the question of issuing the same shall have been submitted to the electors of such city or village at a general election therein, or at a special election called for the purpose of submitting a proposition to issue such bonds, and unless at such election a majority of the electors voting on such proposition shall have voted in favor of issuing such bonds. The question of bond issues in such cities and villages, when defeated, shall not be resubmitted in substance for a period of six months from and after the date of such election. Such bonds shall be payable in not exceeding twenty years from their date and shall bear interest payable annually or semiannually.

Source: Laws 1937, c. 35, § 3, p. 163; C.S.Supp.,1941, § 17-592; R.S. 1943, § 17-950; Laws 1955, c. 44, § 1, p. 159; Laws 1965, c. 71, § 1, p. 292; Laws 1969, c. 51, § 57, p. 308; Laws 1971, LB 534, § 18; Laws 1979, LB 187, § 61; Laws 1982, LB 692, § 2; Laws 2017, LB133, § 282.

17-951 Facilities; maintenance and improvement; tax authorized.

The mayor and city council of any city of the second class or the village board of trustees of any village which has already acquired or hereafter acquires land for park purposes or recreational facilities or which has already built or hereafter builds swimming pools, recreational facilities, or dams may each year make and levy a tax upon the taxable value of all the taxable property in such city or village. The levy shall be collected and put into the city or village treasury and shall constitute the park and recreation fund of such city or village. The funds so levied and collected shall be used for amusements, for laying out, improving, and beautifying such parks, for maintaining, improving, managing, and beautifying such swimming pools, recreational facilities, or dams, and for the payment of salaries and wages of persons employed in the performance of such labor.

Source: Laws 1937, c. 35, § 4, p. 163; C.S.Supp.,1941, § 17-593; R.S. 1943, § 17-951; Laws 1953, c. 36, § 1, p. 127; Laws 1969, c. 86, § 4, p. 432; Laws 1979, LB 187, § 62; Laws 1992, LB 719A, § 63; Laws 2017, LB133, § 283.

17-952 Board of commissioners; members; duties.

In each city of the second class or village, where land for park purposes or recreational facilities is acquired, or swimming pools, recreational facilities, or dams may be built, the mayor and city council of the city or the village board of trustees may provide by ordinance for the creation of a board of park commissioners, or board of park and recreation commissioners, which, in either case, shall be composed of not less than three members, who shall be residents of the city or village, and who shall have charge of all parks and recreational facilities belonging to the city or village, and shall have the power to establish rules for the management, care, and use of the same. Where such board of park commissioners or board of park and recreation commissioners has been appointed and qualified, all accounts against the park fund or park and recreation fund shall be audited by such board, and warrants against the fund shall be drawn by the chairperson of such board, and warrants so drawn shall be paid by the city treasurer or village treasurer out of such fund.

Source: Laws 1937, c. 35, § 5, p. 163; C.S.Supp.,1941, § 17-594; R.S. 1943, § 17-952; Laws 1969, c. 86, § 5, p. 432; Laws 2005, LB 626, § 4; Laws 2017, LB133, § 284.

(e) PUBLIC BUILDINGS**17-953 Public buildings; acquisition or construction; approval of electors required; exception.**

Cities of the second class and villages are hereby authorized and empowered to (1) purchase, (2) accept by gift or devise, (3) purchase real estate upon which to erect, and (4) erect a building or buildings for an auditorium, fire station, municipal building, or community house for housing municipal enterprises and social and recreation purposes, and other public buildings, including the construction of buildings authorized to be constructed by Chapter 72, article 14, and including construction of buildings to be leased in whole or in part by the city or village to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings, and maintain, manage,

and operate the same for the benefit of the inhabitants of such cities or villages. Except as provided in section 17-953.01, before any such purchase can be made or building erected, the question shall be submitted to the electors of such city or village at a general municipal election or at an election duly called for that purpose, or as set forth in section 17-954, and be adopted by a majority of the electors voting on such question.

Source: Laws 1935, c. 37, § 1, p. 151; C.S.Supp.,1941, § 17-167; R.S. 1943, § 17-953; Laws 1947, c. 40, § 1, p. 153; Laws 1955, c. 45, § 2, p. 162; Laws 1969, c. 97, § 1, p. 465; Laws 1981, LB 220, § 1; Laws 2017, LB133, § 285.

17-953.01 Purchase or construction of public buildings without bond issue; remonstrance petition; procedure.

If the funds to be used to finance the purchase or construction of a building under section 17-953 are available other than through a bond issue, then either:

(1) Notice of the proposed purchase or construction shall be published in a legal newspaper in or of general circulation in the city or village and no election shall be required to approve the purchase or construction unless within thirty days after the publication of the notice a remonstrance petition against the purchase or construction is signed by registered voters of the city or village equal in number to fifteen percent of the registered voters of the city or village voting at the last regular municipal election held therein and is filed with the governing body of the city or village. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. If a petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the city or village at a general municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or

(2) The governing body may proceed without providing the notice and right of petition required in subdivision (1) of this section if the property can be purchased below the fair market value as determined by an appraisal, and there is a willing seller, and the purchase price is less than twenty-five thousand dollars. Such purchase shall be approved by the governing body after notice and public hearing as provided in section 18-1755.

Source: Laws 1981, LB 220, § 2; Laws 1993, LB 59, § 3; Laws 1995, LB 197, § 2; Laws 2017, LB133, § 286.

17-954 Public buildings; purchase or construction; bonds; approval of electors required; exception.

The mayor and city council of a city of the second class or the chairperson and village board of trustees adopting the proposition to make a purchase or erect a building or buildings for the purposes set forth in section 17-953 shall have the power to borrow money and pledge the property and credit of the city or village upon its negotiable bonds. No such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general municipal election or at a special election called for the submission of such proposition. The question of such

purchase or erection of such a building or buildings, as set forth in section 17-953, and the question of the issuance of the negotiable bonds referred to in this section may be submitted as one question at a general municipal or special election if so ordered by resolution or ordinance. Notice of the time and place of such election shall be given by publication in a legal newspaper in or of general circulation in such city or village three successive weeks immediately prior thereto. No such election for the issuance of such bonds shall be called until a petition for the election signed by at least ten percent of the legal voters of such city or village has been presented to the city council or to the village board of trustees. The number of voters voting at the last regular municipal election prior to the presenting of such petition shall be deemed the number of votes in such city or village for the purpose of determining the sufficiency of such petition. The question of bond issues for such purpose in such cities or villages when defeated shall not be resubmitted for six months from and after the date of such election. When the building to be constructed is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building, and when such sum does not exceed two million dollars, then no such vote of the electors will be required.

Source: Laws 1935, c. 37, § 2, p. 151; C.S.Supp.,1941, § 17-168; R.S. 1943, § 17-954; Laws 1947, c. 40, § 2, p. 154; Laws 1969, c. 97, § 2, p. 466; Laws 2017, LB133, § 287.

17-955 Public buildings; maintenance; tax.

The mayor and city council of cities of the second class and chairperson and village board of trustees of villages shall have the power to levy an annual tax not to exceed seven cents on each one hundred dollars upon the taxable value of the taxable property in such cities or villages for the purpose of maintaining an auditorium, municipal building, or community house and shall, by ordinance, determine and declare how such auditorium, municipal building, or community house shall be managed.

Source: Laws 1935, c. 37, § 3, p. 152; C.S.Supp.,1941, § 17-169; R.S. 1943, § 17-955; Laws 1947, c. 40, § 3, p. 155; Laws 1953, c. 287, § 24, p. 930; Laws 1957, c. 35, § 1, p. 199; Laws 1979, LB 187, § 63; Laws 1992, LB 1063, § 9; Laws 1992, Second Spec. Sess., LB 1, § 9; Laws 2017, LB133, § 288.

(f) REFRIGERATION

17-957 Cold storage plants; construction; cost; tax; bonds.

The cost of cold storage or refrigeration plants under section 17-956 may be defrayed by the levy of a tax of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within the corporate limits of such city or village in any one year or, when such tax is insufficient for the purpose, by the issuance of bonds of the municipality.

Source: Laws 1941, c. 24, § 2, p. 118; C.S.Supp.,1941, § 17-802; R.S. 1943, § 17-957; Laws 1953, c. 287, § 25, p. 945; Laws 1979, LB 187, § 64; Laws 1992, LB 1063, § 10; Laws 1992, Second Spec. Sess., LB 1, § 10; Laws 2017, LB133, § 289.

17-958 Cold storage plants; bonds; approval of electors; interest; redemption.

The question of issuing bonds for any purpose contemplated by sections 17-956 to 17-960 shall be submitted to the electors at any election held for that purpose after not less than thirty days' notice has been given by publication in a legal newspaper in or of general circulation in such municipality. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. Such bonds shall bear interest, payable annually or semiannually, and shall be payable any time the municipality may determine at the time of their issuance but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction or purchase of a cold storage or refrigeration plant shall not exceed five percent of the taxable valuation of all the property in such city or village subject to taxation.

Source: Laws 1941, c. 24, § 3, p. 118; C.S.Supp.,1941, § 17-803; R.S. 1943, § 17-958; Laws 1969, c. 51, § 58, p. 308; Laws 1971, LB 534, § 19; Laws 1986, LB 960, § 9; Laws 1992, LB 719A, § 64; Laws 2017, LB133, § 290.

17-959 Cold storage plants; operation and extension; tax.

The city council or village board of trustees shall levy annually a sufficient tax to maintain, operate, and extend any cold storage or refrigeration plant as provided under section 17-956 and to provide for the payment of the interest on, and principal of, any bonds that may have been issued as provided in section 17-957.

Source: Laws 1941, c. 24, § 3, p. 119; C.S.Supp.,1941, § 17-803; R.S. 1943, § 17-959; Laws 2017, LB133, § 291.

17-960 Cold storage plants; management; rates.

When any cold storage or refrigeration plant shall have been established under section 17-956, the municipality shall provide by ordinance for the management thereof and the rates to be charged and the manner of payment for such cold storage or refrigeration plant service to be furnished. In municipalities maintaining a system of waterworks and having a water commissioner, he or she shall have charge of the cold storage or refrigeration plant unless the local governing body shall otherwise provide by the ordinance which shall establish rules and regulations to govern and control such utility.

Source: Laws 1941, c. 24, § 4, p. 119; C.S.Supp.,1941, § 17-804; R.S. 1943, § 17-960; Laws 2017, LB133, § 292.

(g) MEDICAL AND HOUSING FACILITIES

17-962 Gift or devise; approval by city council or village board of trustees.

Before any gift or devise specified in section 17-961 may be accepted, such gift or devise shall be approved by the city council or village board of trustees.

Source: Laws 1945, c. 31, § 2, p. 149; Laws 1992, LB 1240, § 15; Laws 2017, LB133, § 293.

17-963 Facility; acquisition or construction; issuance of bonds; interest; election.

(1) The mayor and city council of a city of the second class or the chairperson and village board of trustees of a village adopting the proposition to accept a

gift or devise, make such purchase, erect such building or buildings, or maintain, manage, improve, remodel, equip, and operate a facility under section 17-961 shall have the power to borrow money and pledge the property and credit of the city or village upon its municipal bonds, or otherwise, for such purpose or purposes, except that no such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance at a general municipal election or at a special election called for the submission of such proposition.

(2) The bonds shall be payable in not to exceed twenty years from date and shall bear interest payable annually or semiannually. Notice of the time and place of the election shall be given by publication three successive weeks prior to such election in a legal newspaper in or of general circulation in such city or village.

(3) No election shall be called until a petition for the election, signed by at least ten percent of the legal voters of such city or village, has been presented to the city council or to the village board of trustees. The number of voters of the city or village voting for the office of Governor at the last general election prior to the presenting of such petition shall be deemed the number of voters in the city or village for the purpose of determining the sufficiency of such a petition. If such a bond issue in such a city or village is defeated, the proposition of issuing bonds for such a purpose shall not be resubmitted to the voters therein within a period of six months from and after the date of such election.

Source: Laws 1945, c. 31, § 3, p. 149; Laws 1947, c. 41, § 1, p. 156; Laws 1957, c. 36, § 2, p. 201; Laws 1965, c. 72, § 2, p. 293; Laws 1969, c. 51, § 59, p. 309; Laws 1971, LB 534, § 20; Laws 1992, LB 1240, § 16; Laws 2017, LB133, § 294.

17-964 Facility; maintenance; tax.

The mayor and city council of cities of the second class and the chairperson and village board of trustees of villages shall have the power to levy a tax each year of not to exceed seven cents on each one hundred dollars upon the taxable value of all the taxable property in such cities or villages for the purpose of maintaining and operating a facility as provided in sections 17-961 to 17-966. The city council or village board of trustees shall by ordinance determine and declare how the facility shall be managed.

Source: Laws 1945, c. 31, § 4, p. 150; Laws 1953, c. 287, § 26, p. 946; Laws 1957, c. 36, § 3, p. 202; Laws 1965, c. 72, § 3, p. 294; Laws 1979, LB 187, § 65; Laws 1992, LB 719A, § 65; Laws 1992, LB 1240, § 17; Laws 2017, LB133, § 295.

17-965 Facility fund; established; custodian.

Whenever a city or village acquires a facility as provided in sections 17-961 to 17-966, there shall be established a facility fund of which the city treasurer or village treasurer shall be the custodian. All funds received by gift or devise or raised by taxation, as provided in such sections, shall be paid into such fund.

Source: Laws 1945, c. 31, § 5, p. 150; Laws 1957, c. 36, § 4, p. 202; Laws 1965, c. 72, § 4, p. 295; Laws 1992, LB 1240, § 18; Laws 2017, LB133, § 296.

17-966 Facility board; members; duties; powers; warrants.

In each city or village where a facility as provided in sections 17-961 to 17-966 is established, the mayor and city council of such city or the chairperson and village board of trustees of such village may provide by ordinance for the creation of a facility board which shall be composed of not less than three nor more than seven members. The members of the facility board shall (1) be residents of such city or village, (2) have charge of the facility, and (3) have the power to establish rules for the management, operation, and use of the facility, as provided by such ordinance. When a facility board has been appointed and qualified, all accounts against the facility fund shall be audited by the facility board, warrants against such fund shall be drawn by the chairperson of such board, and warrants so drawn shall be paid by the city treasurer or village treasurer out of such fund.

Source: Laws 1945, c. 31, § 6, p. 150; Laws 1957, c. 36, § 5, p. 202; Laws 1965, c. 72, § 5, p. 295; Laws 1992, LB 1240, § 19; Laws 2003, LB 76, § 1; Laws 2017, LB133, § 297.

(h) LIBRARIES

17-967 Bonds; city of the second class or village; municipal library; issuance; interest; conditions; limitations; tax levy.

Any city of the second class or village is hereby authorized to issue bonds in aid of improving municipal libraries of cities of the second class and villages in an amount not exceeding seven-tenths of one percent of the taxable valuation of all the taxable property, as shown by the last assessment, within such city of the second class or village in the manner directed in this section:

(1) A petition signed by not less than fifty property owners of the city of the second class or village shall be presented to the city council or village board of trustees. Such petition shall set forth the nature of the work contemplated, the amount of bonds sought to be voted, the rate of interest, and the length of time such bonds run, which in no event shall be less than five years nor more than twenty years from the date of such petition. The petitioners shall give bond to be approved by the city council or village board of trustees for the payment of the expenses of the election in the event that the proposition fails to receive a majority of the votes cast at such election; and

(2) Upon the receipt of such petition, the city council or village board of trustees shall give notice and call an election in the city of the second class or village. Such notice, call, and election shall be governed by the Election Act. When a proposition is submitted for the issuance of bonds for the acquisition of a site or the construction of a single building for the purpose of housing the municipal public library in cities of the second class or villages, it shall be required as a condition precedent to the issuance of such bonds that a majority of the votes cast shall be in favor of such proposition. Bonds in such city or village shall not be issued for such purpose in the aggregate to exceed one and four-tenths percent of the taxable valuation of all the taxable property in such a city or village as shown by the last assessment within such city or village.

Source: Laws 1967, c. 33, § 3, p. 154; Laws 1969, c. 51, § 60, p. 310; Laws 1971, LB 534, § 21; Laws 1979, LB 187, § 66; Laws 1992, LB 719A, § 66; Laws 2017, LB133, § 298.

Cross References

Election Act, see section 32-101.

17-968 Bonds; issuance; record.

If a majority of the votes cast at an election called under section 17-967 are in favor of the proposition, the city council or village board of trustees shall cause to be prepared and shall issue the bonds in accordance with the petition and notice of election. The bonds shall be signed by the mayor and city clerk or chairperson of the village board of trustees and village clerk and shall be attested by the respective seals. The city clerk or village clerk shall enter upon the records of the city council or village board of trustees, the petition, bond, notice, and call for the election, canvass of the vote, the number, amount, and interest, and the date at which each bond issued shall become payable.

Source: Laws 1967, c. 33, § 4, p. 156; Laws 1971, LB 534, § 22; Laws 2001, LB 420, § 18; Laws 2017, LB133, § 299.

17-969 Bonds; sinking fund; interest; levy.

The city council or village board of trustees shall each year until the bonds issued under the authority of section 17-967 be paid, levy upon the taxable property in the city of the second class or village, a tax sufficient to pay the interest and five percent of the principal as a sinking fund; and at the tax levy preceding the maturity of any such bonds, levy an amount sufficient to pay the principal and interest due on such bonds.

Source: Laws 1967, c. 33, § 5, p. 156; Laws 2017, LB133, § 300.

(i) WATER SERVICE DISTRICT**17-970 Water service districts; establishment; ordinance.**

The governing body of any city of the second class or village shall have power, by ordinance, (1) to lay out the city or village into suitable districts for the purpose of establishing a system of water service districts, (2) to provide water service systems and regulate the construction, repair, and use of the water service systems, (3) to compel all proper connections with the water service system and branches from other streets, avenues, and alleys, and from private property, and (4) to provide a penalty not to exceed one hundred dollars for any obstruction or injury to any water main or part thereof, or for failure to comply with the regulations prescribed therefor. No such improvements shall be ordered except as provided in sections 17-971 and 17-972.

Source: Laws 1967, c. 73, § 1, p. 237; Laws 2017, LB133, § 301.

17-971 Water service districts; improvements; protest; effect; special assessments.

If a governing body deems it necessary or desirable to make improvements in a water service district, it shall by ordinance create such water service district and, after the passage, approval, and publication of such ordinance, shall publish notice of the creation of such district for two consecutive weeks in a legal newspaper in or of general circulation in the city or village. If a majority of the resident owners of the property directly abutting upon any water main to be constructed within such water service district shall file with the city clerk or the village clerk within twenty days after the first publication of such notice written objections to the creation of such district, such improvement shall not be made as provided in such ordinance, but such ordinance shall be repealed. If such objections are not so filed against the district, the governing body shall

immediately cause such work to be done or such improvement to be made, shall contract for the work or improvement, and shall levy special assessments on the lots and parcels of land within such district or districts specially benefited in proportion to such benefits in order to pay the cost of such improvement.

Source: Laws 1967, c. 73, § 2, p. 237; Laws 1986, LB 960, § 10; Laws 2015, LB361, § 38; Laws 2017, LB133, § 302.

17-972 Water service districts; failure to comply with regulation or make connection; effect; special assessment.

If any property owner shall neglect or fail, for ten days after notice either by personal service or by publication in a legal newspaper in the manner prescribed in section 17-971, to comply with the regulations adopted pursuant to section 17-970 or to make any required connections, the governing body may cause the compliance or connections to be done and assess the cost against the property as a special assessment and collect the special assessment in the manner provided for other special assessments.

Source: Laws 1967, c. 73, § 3, p. 238; Laws 1986, LB 960, § 11; Laws 2015, LB361, § 39.

17-973 Water service district; assessments; lien; date due; payable.

All assessments made under the provisions of sections 17-970 to 17-976 shall be a lien on the property against which levied from the date of levy and shall thereupon be certified by direction of the governing body to the city treasurer or village treasurer for collection. Except as provided in section 18-1216, such assessments shall be due and payable to such treasurer until November 1 thereafter or until the delivery of the tax list for such year to the treasurer of the county in which such city or village may be situated, at and after which time the same shall be due and payable to such county treasurer. The governing body of such city or village shall, within the time provided by law, cause such assessments, or the portion thereof remaining unpaid, to be certified to the county clerk for entry upon the proper tax lists. If the city treasurer or village treasurer collects any assessment or portion thereof so certified while the same shall be payable to the county treasurer, the city treasurer or village treasurer shall certify the assessment or portion thereof to the county treasurer at once, and the county treasurer shall correct the record to show such payment.

Source: Laws 1967, c. 73, § 4, p. 238; Laws 1996, LB 962, § 2; Laws 2017, LB133, § 303.

17-974 Water service district; assessments; delinquent; interest; rate; payment.

Assessments under section 17-973 shall become delinquent in equal annual installments over such period of years, not to exceed ten, as the governing body may determine at the time of making the levy, the first such equal installment to become delinquent in fifty days after the date of such levy. Each of such installments, except the first, shall draw interest at a rate not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, payable annually, from the time of the levy until the same shall become delinquent, and after the same becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be

adjusted by the Legislature, shall be paid thereon. All of such installments may be paid at one time on any lot or land within fifty days from the date of the levy without interest and, if so paid, such lot or land shall be exempt from any lien or charge for such installments.

Source: Laws 1967, c. 73, § 5, p. 239; Laws 1980, LB 933, § 21; Laws 1981, LB 167, § 22; Laws 2017, LB133, § 304.

17-976 Water service districts; cost of improvements; bonds; interest; issuance; tax; levy.

For the purpose of paying the cost of improvements in any water service district and the funding of any warrants issued, the governing body may by ordinance cause to be issued bonds of the city or village to be called Water Service District Bonds of District No. . . . , payable in not to exceed ten years from date and to bear interest payable annually or semiannually. Such bonds shall be general obligations of the city or village, and the governing body shall levy and collect annually a tax upon all of the taxable property in such city or village sufficient in rate and amount to pay in full, when taken together with the assessments provided for in section 17-971, the principal and interest of such bonds as the same become due. The amount of such tax shall not be included in the maximum amount of tax which any such city of the second class or village is authorized to levy annually.

Source: Laws 1967, c. 73, § 7, p. 239; Laws 1969, c. 51, § 61, p. 311; Laws 1992, LB 719A, § 67; Laws 2017, LB133, § 305.

ARTICLE 10

SUBURBAN DEVELOPMENT

Section

- 17-1001. Suburban development; zoning ordinances; building regulations; public utility codes; extension; notice to county board.
- 17-1002. Designation of jurisdiction; suburban development; subdivision; platting; consent required; review; when required.
- 17-1003. Suburban development; powers of city council or village board of trustees; dedication of avenues, streets, and alleys.

17-1001 Suburban development; zoning ordinances; building regulations; public utility codes; extension; notice to county board.

(1) Except as provided in section 13-327 and subsection (2) of this section, the extraterritorial zoning jurisdiction of a city of the second class or village shall consist of the unincorporated area one mile beyond and adjacent to its corporate boundaries.

(2) For purposes of sections 70-1001 to 70-1020, the extraterritorial zoning jurisdiction of a city of the second class or village shall consist of the unincorporated area one-half mile beyond and adjacent to its corporate boundaries.

(3) Any city of the second class or village may apply by ordinance any existing or future zoning regulations, property use regulations, building ordinances, electrical ordinances, and plumbing ordinances within its extraterritorial zoning jurisdiction, with the same force and effect as if such area was within its corporate limits. No such ordinance shall be extended or applied so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry. The fact that the extraterritorial zoning

jurisdiction or part thereof is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the powers of the city or village to apply such ordinances.

(4)(a) A city of the second class or village shall provide written notice to the county board of the county in which the extraterritorial zoning jurisdiction of the city or village is located when proposing to adopt or amend a zoning ordinance which affects the extraterritorial zoning jurisdiction of the city or village within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city or village. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city or village within thirty days after receiving such notice. The city or village may make its final decision (i) upon the expiration of the thirty days following the notice or (ii) when the county board submits comments or recommendations, if any, to the city or village prior to the expiration of the thirty days following the notice.

(b) Subdivision (4)(a) of this section does not apply to a city of the second class or a village (i) located in a county with a population in excess of one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or (ii) if the city or village and the county have a joint planning commission or joint planning department.

Source: Laws 1957, c. 37, § 1, p. 204; Laws 1967, c. 70, § 3, p. 232; Laws 1967, c. 75, § 4, p. 244; Laws 1983, LB 71, § 4; Laws 2002, LB 729, § 10; Laws 2016, LB295, § 2; Laws 2017, LB113, § 20; Laws 2017, LB133, § 306.

17-1002 Designation of jurisdiction; suburban development; subdivision; platting; consent required; review; when required.

(1) Except as provided in subsection (5) of this section, any city of the second class or village may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402.

(2) No owner of any real property located within the area designated by a city or village pursuant to subsection (1) or (5) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council or village board of trustees or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or village board of trustees or its designated agent.

(3) No plat of such real property shall be recorded or have any force or effect unless approved by the city council or village board of trustees or its designated agent.

(4) Except as provided in subsection (6) of this section, in counties that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a city of the second class or village in that county, when such proposed plat lies partially or totally within the portion of the extraterritorial zoning jurisdiction of that city or village where the powers and duties granted by this section and section 17-1003 or section 19-2402 are being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

(5) If a city of the second class or village receives approval for the cession and transfer of additional extraterritorial zoning jurisdiction under section 13-327, such city or village may designate by ordinance the portion of the territory located within its extraterritorial zoning jurisdiction and outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402 and shall include territory ceded under section 13-327 within such designation.

(6) In counties having a population in excess of one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census but less than two hundred fifty thousand inhabitants that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning department and public works department shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a city of the second class or village in that county, when such proposed plat lies partially or totally within the extraterritorial zoning jurisdiction being exercised by that city of the second class or village in such county. The county may officially comment on the appropriateness of the design and improvements proposed in the plat.

Source: Laws 1957, c. 37, § 2, p. 204; Laws 1967, c. 70, § 4, p. 233; Laws 1967, c. 75, § 5, p. 244; Laws 1978, LB 186, § 2; Laws 1983, LB 71, § 5; Laws 1993, LB 208, § 3; Laws 2001, LB 222, § 2; Laws 2002, LB 729, § 11; Laws 2003, LB 187, § 5; Laws 2016, LB864, § 3; Laws 2016, LB877, § 1; Laws 2017, LB74, § 3; Laws 2017, LB133, § 307.

17-1003 Suburban development; powers of city council or village board of trustees; dedication of avenues, streets, and alleys.

The city council of a city of the second class or village board of trustees shall have power, by ordinance, to provide the manner, plan, or method by which the real property within the extraterritorial zoning jurisdiction of the city or village may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the same. The city council or village board of trustees shall have the power to compel the owner of

any such real property, in subdividing, platting, or laying out of same, to conform to the requirements of such ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

Source: Laws 1957, c. 37, § 3, p. 204; Laws 2017, LB133, § 308.

CHAPTER 18

CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

1. Ordinances. 18-132.
2. Direct Borrowing from Financial Institution. 18-201.
4. Public Utilities. 18-406.
6. Subways and Viaducts. 18-601, 18-613.
17. Miscellaneous. 18-1719 to 18-1753.
21. Community Development. 18-2101 to 18-2153.
27. Municipal Economic Development. 18-2701 to 18-2717.
29. Urban Growth Districts. 18-2901.
30. Planned Unit Development. 18-3001.
31. Municipal Custodianship for Dissolved Homeowners Associations Act. 18-3101 to 18-3105.
32. Property Assessed Clean Energy Act. Transferred.
33. Annexation. 18-3301 to 18-3315.

ARTICLE 1

ORDINANCES

Section

- 18-132. Adoption of standard codes.

18-132 Adoption of standard codes.

(1) The city council of any city or village board of any village may adopt by ordinance the conditions, provisions, limitations, and terms of a plumbing code, an electrical code, a fire prevention code, a building or construction code, and any other standard code which contains rules and regulations printed as a code in book or pamphlet form, by reference to such code, or portions thereof, alone, without setting forth in the ordinance the conditions, provisions, limitations, and terms of such code. When any such code, or portion thereof, has been incorporated by reference into such ordinance, as provided in this section, it shall have the same force and effect as though it had been written in its entirety in such ordinance without further or additional publication thereof.

(2) Not less than one copy of such standard code, or portion thereof, shall be kept for use and examination by the public in the office of the city or village clerk prior to the adoption thereof and as long as such standard code is in effect in such city or village.

(3) Any building or construction code implemented under this section shall be adopted and enforced as provided in section 71-6406.

(4) If there is no ordinance adopting a plumbing code in effect in a city or village, the 2009 Uniform Plumbing Code accredited by the American National Standards Institute shall serve as the plumbing code for all the area within the jurisdiction of the city or village. Nothing in this section shall be interpreted as

creating an obligation for the city or village to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Source: Laws 1933, c. 111, § 1, p. 451; C.S.Supp.,1941, § 18-1501; R.S.1943, § 18-132; Laws 1984, LB 748, § 1; Laws 1996, LB 1304, § 1; Laws 2012, LB42, § 1; Laws 2016, LB704, § 209.

ARTICLE 2

DIRECT BORROWING FROM FINANCIAL INSTITUTION

Section

18-201. Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

18-201 Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

(1) The mayor and the council of any city or board of trustees of any village, in addition to other powers granted by law, may by ordinance or resolution provide for direct borrowing from a financial institution for the purposes outlined in this section. Loans made under this section shall not be restricted to a single year and may be repaid in installment payments.

(2) The mayor and the council of any city or board of trustees of any village may borrow directly from a financial institution for the purchase of real or personal property, construction of improvements, or refinancing of existing indebtedness upon a certification in the ordinance or resolution authorizing the direct borrowing that:

(a) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing would be impractical;

(b) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing could not be completed within the time restraints facing the city or village; or

(c) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through direct borrowing would generate taxpayer savings over traditional bond financing.

(3) Prior to approving direct borrowing under this section, the council or board of trustees shall include in any public notice required for meetings a clear notation that an ordinance or resolution authorizing direct borrowing from a financial institution will appear on the agenda.

(4) The total amount of indebtedness from direct borrowing under this section shall not exceed:

(a) For a city of the metropolitan class, city of the primary class, city of the first class, or city of the second class, ten percent of the municipal budget of the city; and

(b) For any village, twenty percent of the municipal budget of the village.

(5) Prior to approving direct borrowing under this section, a municipality shall consider, to the extent possible, proposals from multiple financial institutions.

(6) For purposes of this section, financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, or savings and loan association.

Source: Laws 2015, LB152, § 1.

ARTICLE 4 PUBLIC UTILITIES

Section

18-406. Public utility districts; special assessments; when due; equalization; interest.

18-406 Public utility districts; special assessments; when due; equalization; interest.

The special assessment provided in section 18-405 shall be paid in ten installments. The first installment, or one-tenth of the assessment, shall become due and delinquent fifty days after the date of levy, and one-tenth of such assessment shall become due and delinquent each year thereafter, counting from the date of levy, for nine years. The special assessment shall bear interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, prior to delinquency, and at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, after delinquency. Prior to the levy of the special assessment as provided in section 18-405, such assessment shall be equalized in the same manner as provided by law for the equalization of special assessments levied in such cities, such villages, and the city of the metropolitan class within such metropolitan utilities district.

Source: Laws 1921, c. 110, § 5, p. 388; C.S.1922, § 4479; C.S.1929, § 18-1005; Laws 1941, c. 27, § 1, p. 129; C.S.Supp.,1941, § 18-1005; R.S.1943, § 18-406; Laws 1963, c. 80, § 1, p. 287; Laws 1980, LB 933, § 22; Laws 1981, LB 167, § 23; Laws 1983, LB 438, § 1; Laws 1992, LB 746, § 67; Laws 2015, LB361, § 40.

ARTICLE 6 SUBWAYS AND VIADUCTS

Section

18-601. Construction; federal aid; plans; assumption of liability; condemnation procedure.

18-613. Department of Transportation; construction contracts authorized.

18-601 Construction; federal aid; plans; assumption of liability; condemnation procedure.

Any city or village shall have power by ordinance to avail itself of federal funds for the construction within the city or village limits of subways, viaducts, and approaches thereto, over or under railroad tracks, and may authorize agreements with the Department of Transportation to construct such viaducts or subways, which shall be paid for out of funds furnished by the federal government. The ordinance shall approve detailed plans and specifications for such construction, including a map showing the exact location that such viaduct or subway is to occupy, which shall then and thereafter be kept on file with the city or village clerk and be open to public inspection. The ordinance shall make provision for the assumption of liability and payment of consequen-

tial damages to property owners resulting from such proposed construction and payment of damages for property taken therefor. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1935, Spec. Sess., c. 34, § 1, p. 196; C.S.Supp.,1941, § 18-901; R.S.1943, § 18-601; Laws 1947, c. 47, § 1, p. 166; Laws 1951, c. 101, § 61, p. 475; Laws 2017, LB339, § 79.

18-613 Department of Transportation; construction contracts authorized.

The Department of Transportation shall be authorized to enter into contracts for the construction of such viaduct or subway, in accordance with such plans and specifications, immediately upon the approval by the voters of such issuing of bonds.

Source: Laws 1935, Spec. Sess., c. 34, § 13, p. 199; C.S.Supp.,1941, § 18-1913; R.S.1943, § 18-613; Laws 2017, LB339, § 80.

ARTICLE 17

MISCELLANEOUS

Section

- 18-1719. Weeds; destruction and removal within right-of-way of railroads; powers; special assessment.
- 18-1736. Handicapped or disabled persons; designation of parking spaces.
- 18-1738. Repealed. Laws 2014, LB 657, § 14.
- 18-1738.01. Repealed. Laws 2014, LB 657, § 14.
- 18-1738.02. Repealed. Laws 2014, LB 657, § 14.
- 18-1739. Repealed. Laws 2014, LB 657, § 14.
- 18-1740. Repealed. Laws 2014, LB 657, § 14.
- 18-1741. Repealed. Laws 2014, LB 657, § 14.
- 18-1741.02. Handicapped parking infraction; penalties; suspension of permit; fine.
- 18-1742. Repealed. Laws 2014, LB 657, § 14.
- 18-1751. Special improvement district; authorized; when; special assessment.
- 18-1753. Annexation; additional population; report to Tax Commissioner; calculations.

18-1719 Weeds; destruction and removal within right-of-way of railroads; powers; special assessment.

Any city or village may provide for the destruction and removal of specified portions of weeds and worthless vegetation within the right-of-way of all railroads within the corporate limits of any such city or village, and it may require the owner or owners of such right-of-way to destroy and remove the weeds or vegetation therefrom. If such owner or owners fail, neglect, or refuse, after ten days' written notice to remove the weeds or vegetation, such city or village, by its proper officers, shall destroy and remove the weeds or vegetation or cause the weeds or vegetation to be destroyed or removed and shall assess the cost thereof against such property as a special assessment. No city or village shall destroy or remove or otherwise treat such specified portions until after the time has passed in which the railroad company is required to destroy or remove such vegetation.

Source: Laws 1969, c. 599, § 2, p. 2454; Laws 2015, LB361, § 41.

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 18-1741.07:

(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; Laws 2014, LB657, § 1.

18-1738 Repealed. Laws 2014, LB 657, § 14.

18-1738.01 Repealed. Laws 2014, LB 657, § 14.

18-1738.02 Repealed. Laws 2014, LB 657, § 14.

18-1739 Repealed. Laws 2014, LB 657, § 14.

18-1740 Repealed. Laws 2014, LB 657, § 14.

18-1741 Repealed. Laws 2014, LB 657, § 14.

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 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; Laws 2014, LB657, § 2.

18-1742 Repealed. Laws 2014, LB 657, § 14.

18-1751 Special improvement district; authorized; when; special assessment.

All cities and villages may create a special improvement district for the purpose of replacing, reconstructing, or repairing an existing street, alley, water line, sewer line, or any other such improvement. Except as provided in sections 19-2428 to 19-2431, the city council or board of trustees may levy a special assessment, to the extent of such special benefits, for the costs of such improvements upon the properties found specially benefited thereby, whether or not such properties were previously assessed for the same general purpose. In creating such special improvement district, the city council or board of trustees shall follow procedures applicable to the creation and assessment of the same type of improvement district as otherwise provided by law.

Source: Laws 1987, LB 721, § 1; Laws 2015, LB361, § 42.

18-1753 Annexation; additional population; report to Tax Commissioner; calculations.

(1) Any city or village annexing territory which thereby adds additional population to the city or village shall report such annexation to the Tax Commissioner. The annexing city or village shall provide the Tax Commissioner with a copy of the ordinance annexing the territory and specify the effective date of the annexation. The annexing city or village shall provide its calculation of the number of additional residents added to the population of the city or village by reason of the annexation and the new combined total population of the city or village and shall inform the Tax Commissioner of the source and date of the federal census relied upon in the calculations.

(2)(a) All calculations of additional population shall be based upon federal census figures from the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(b) If the boundaries of the territory annexed and those of federal census enumeration districts are the same, or if federal census enumeration districts are wholly contained within the boundaries of the area annexed, the most recent federal census figures for such enumeration districts shall be added directly to the population of the city or village.

(c) If the federal census enumeration districts are partly within and partly without the boundaries of the territory annexed, the federal census figures for such enumeration districts shall be adjusted by reasonable interpretation and supplemented by other evidence to arrive at a figure for the number of people residing in the area annexed as such population existed in that area at the time of the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census. Reasonable interpretation shall include, but not be limited to, the following methods: An actual house

count of the annexed territory multiplied by the average number of persons per household as this information existed at the time of the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; or multiplying the population that existed at the time of the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census in the enumeration district by a ratio of the actual current population of the enumeration district divided in the same manner as the annexation.

(d) The population of the city or village following annexation shall be (i) the population of the city or village as reported by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or (ii) the population of the city or village as reported by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census plus the population of the territory annexed as calculated in subdivisions (b) and (c) of this subsection.

Source: Laws 1993, LB 726, § 1; Laws 1994, LB 1127, § 2; Laws 2017, LB113, § 21.

**ARTICLE 21
COMMUNITY DEVELOPMENT**

Section

- 18-2101. Act, how cited.
- 18-2101.01. Creation of agency; cooperation with federal government; taxes, bonds, and notes; other powers.
- 18-2102.01. Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.
- 18-2103. Terms, defined.
- 18-2104. Exercise of powers; objective.
- 18-2107. Authority; powers and duties.
- 18-2109. Redevelopment plan; preparation; requirements; planning commission or board; public hearing; notice; governing body; public hearing; notice.
- 18-2113. Plan; considerations; cost-benefit analysis.
- 18-2115. Redevelopment plan or substantial modification; public hearing; notice; governing board hearing; notice.
- 18-2115.01. Notice; manner.
- 18-2116. Plan; approval; findings.
- 18-2117.01. Plan; report to Property Tax Administrator; contents; compilation of data.
- 18-2117.02. Redevelopment projects; annual report; contents.
- 18-2117.03. Redevelopment project; inclusion of certain costs.
- 18-2117.04. City; retain plans and documents.
- 18-2119. Redevelopment contract proposal; notice; considerations; acceptance; disposal of real property; contract relating to real estate within an enhanced employment area; recordation; division of taxes; certification by redeveloper; retention of documents.
- 18-2122. Real property; eminent domain; effect of resolution.
- 18-2123.01. Redevelopment project with property outside corporate limits; formerly used defense site; agreement with county authorized.
- 18-2125. Bonds; liability; exempt from taxation; anticipation notes; renewal notes; terms; declaration of intent.
- 18-2127. Bonds; sale.
- 18-2129. Bonds; actions; effect.
- 18-2133. Bonds; obligee; causes of action.
- 18-2134. Bonds; who may purchase.
- 18-2137. Property; exempt from taxation; payments in lieu of taxes.
- 18-2138. Public body; cooperate in planning; powers.

Section

- 18-2140. Estimate of expenditures; cities; grant funds; levy taxes; issue bonds.
- 18-2141. Instrument of conveyance; execution; effect.
- 18-2142.01. Validity and enforceability of bonds and agreements; presumption.
- 18-2142.02. Enhanced employment area; redevelopment project; levy of general business occupation tax authorized; governing body; powers; occupation tax; power to levy; exceptions.
- 18-2142.04. Enhanced employment area; authorized work within area; levy of general business occupation tax authorized; exceptions; governing body; powers; revenue bonds authorized; terms and conditions.
- 18-2142.05. Construction of workforce housing; governing body; duties.
- 18-2143. Community Development Law, how construed.
- 18-2144. Community Development Law; controlling over other laws and city charters.
- 18-2145. Limited community redevelopment authority; laws applicable.
- 18-2147. Ad valorem tax; division authorized; limitation; fifteen-year period.
- 18-2153. Sections, how construed.

18-2101 Act, how cited.

Sections 18-2101 to 18-2154 shall be known and may be cited as the Community Development Law.

Source: Laws 1951, c. 224, § 1, p. 797; R.R.S.1943, § 14-1601; Laws 1957, c. 52, § 1, p. 247; R.R.S.1943, § 19-2601; Laws 1973, LB 299, § 1; Laws 1997, LB 875, § 2; Laws 2007, LB562, § 1; Laws 2013, LB66, § 1; Laws 2018, LB496, § 1; Laws 2018, LB874, § 4.

Effective date July 19, 2018.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB496, section 1, with LB874, section 4, to reflect all amendments.

18-2101.01 Creation of agency; cooperation with federal government; taxes, bonds, and notes; other powers.

Cities of all classes and villages of this state are hereby granted power and authority to create a community development agency by ordinance, which agency may consist of the governing body of the city or village or a new or existing municipal division or department, or combination thereof. When such an agency is created, it shall function in the manner prescribed by ordinance and may exercise all of the power and authority granted to a community redevelopment authority under the Community Development Law. Cities of all classes and villages of this state are also granted power and authority to do all community development activities, and to do all things necessary to cooperate with the federal government in all matters relating to community development program activities as a grantee, or as an agent or otherwise, under the provisions of the federal Housing and Community Development Act of 1974, as amended through the Housing and Community Development Amendments of 1981. Whenever such a city exercises the power conferred in this section, it may levy taxes for the exercise of such jurisdiction and authority and may issue general obligation bonds, general obligation notes, revenue bonds, and revenue notes including general obligation and revenue refunding bonds and notes for the purposes set forth in the Community Development Law and under the power granted to any authority described.

Source: Laws 1973, LB 299, § 2; Laws 1976, LB 445, § 1; Laws 1979, LB 158, § 1; Laws 1980, LB 986, § 1; Laws 1983, LB 71, § 7; Laws 2018, LB874, § 5.

Effective date July 19, 2018.

18-2102.01 Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.

Cities of all classes and villages of this state are hereby granted power and authority to create community redevelopment authorities and limited community redevelopment authorities.

(1) Whenever an authority or limited authority is created it shall bear the name of the city creating it and shall be legally known as the Community Redevelopment Authority of the City (or Village) of (name of city or village) or the Limited Community Redevelopment Authority of the City (or Village) of (name of city or village).

(2) When it is determined by the governing body of any city by ordinance in the exercise of its discretion that it is expedient to create a community redevelopment authority or limited community redevelopment authority, the mayor of the city or, if the mayor shall fail to act within ninety days after the passage of the ordinance, the president or other presiding officer other than the mayor of the governing body, with the approval of the governing body of the city, shall appoint five or seven persons who shall constitute the authority or the limited authority. The terms of office of the members of a five-member authority initially appointed shall be for one year, two years, three years, four years, and five years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. The terms of office of the members of a seven-member authority initially appointed shall be one member each for one year, two years, and five years, and two members each for three years and four years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. As the terms of the members of the authority expire in cities not having the city manager form of government, the mayor, with the approval of the governing body of the city, shall appoint or reappoint a member of the authority for a term of five years to succeed the member whose term expires. In cities having the city manager form of government, the city manager shall appoint or reappoint the members with the approval of the governing body. The terms of office of the members of a limited community redevelopment authority shall be for the duration of only one single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority, and the terms of the members of a limited community redevelopment authority shall expire upon the completion of the single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority.

(3) A governing body may at its option submit an ordinance which creates a community redevelopment authority or a limited community redevelopment authority to the electors of the city for approval by a majority vote of the electors voting on the ordinance. On submitting the ordinance for approval, the governing body is authorized to call, by the ordinance, a special or general election and to submit, after thirty days' notice of the time and place of holding the election and according to the manner and method otherwise provided by law for the calling, conducting, canvassing, and certifying of the result of city elections on the submission of propositions to the electors, the proposition to be stated on the ballot as follows:

Shall the City (or Village) of (name of city or village) create a Community Redevelopment Authority of the City (or Village) of (name of city or village)?

- ... Yes
- ... No.

When the ordinance submitted to the electors for approval by a majority vote of the electors voting on the ordinance is to create a limited community redevelopment authority the proposition shall be stated on the ballot as follows:

Shall the City (or Village) of (name of city or village) create a Limited Community Redevelopment Authority of the City (or Village) of (name of city or village)?

- ... Yes
- ... No.

(4) Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Members of the authority so appointed shall hold office until their successors have been appointed and qualified. Members of a limited authority shall hold office as provided in this section. All members of the authority shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred.

(5) Any authority established under this section shall organize by electing one of its members chairperson and another vice-chairperson, shall have power to employ counsel, a director who shall be ex officio secretary of the authority, and such other officers and employees as may be desired, and shall fix the term of office, qualifications, and compensation of each. The holder of the office of community redevelopment administrator or coordinator of the city may, but need not, be appointed the director but at no additional compensation by the authority. Community redevelopment authorities of cities of the first and second class and villages may secure the services of a director, community redevelopment administrator, or coordinator, and other officers and employees as may be desired through contract with the Department of Economic Development upon terms which are mutually agreeable. Any authority established under this section may validly and effectively act on all matters requiring a resolution or other official action by the concurrence of three members of a five-member authority or four members of a seven-member authority present and voting at a meeting of the authority. Orders, requisitions, warrants, and other documents may be executed by the chairperson or vice-chairperson or by or with others designated in its bylaws.

(6) No member or employee of any authority established under this section shall have any interest directly or indirectly in any contract for property, materials, or services to be required by such authority. No member of any authority established under this section shall also be a member of any planning commission created under section 19-925.

(7) The authority shall keep an accurate account of all its activities and of all receipts and disbursements and make an annual report of such activities, receipts, and disbursements to the governing body of the city.

(8) The governing body of a city creating a community redevelopment authority or a limited community redevelopment authority is hereby authorized to appropriate and loan to the authority a sum not exceeding ten thousand dollars for the purposes of paying expenses of organizing and supervising the

work of the authority at the beginning of its activities. The loan shall be authorized by resolution of the governing body which shall set forth the terms and time of the repayment of the loan. The loan may be appropriated out of the general funds or any sinking fund.

(9) All income, revenue, profits, and other funds received by any authority established under this section from whatever source derived, or appropriated by the city, or realized from tax receipts or comprised in the special revenue fund of the city designated for the authority or from the proceeds of bonds, or otherwise, shall be deposited with the city treasurer as ex officio treasurer of the authority without commingling the money with any other money under his or her control and disbursed by him or her by check, draft, or order only upon warrants, orders, or requisitions by the chairperson of the authority or other person authorized by the authority which shall state distinctly the purpose for which the same are drawn. A permanent record shall be kept by the authority of all warrants, orders, or requisitions so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the city treasurer. The books of any authority established under this section shall from time to time be audited upon the order of the governing body of the municipality in such manner as it may direct, and all books and records of the authority shall at all times be open to public inspection. The Auditor of Public Accounts may audit, or cause to be audited, any authority established under this section or any redevelopment plan of such authority when the Auditor of Public Accounts determines such audit is necessary or when requested by the governing body, and such audit shall be at the expense of the authority. The authority may contract with the holders of any of its bonds or notes as to collection, custody, securing investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes. The authority may carry out the contract notwithstanding that such contract may be inconsistent with the previous provisions of this subdivision. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for the deposits of money of any authority established under the provisions of this section pursuant to the Public Funds Deposit Security Act. Section 77-2366 applies to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1957, c. 52, § 3, p. 248; Laws 1961, c. 61, § 2, p. 224; Laws 1963, c. 89, § 9, p. 307; R.S.Supp.,1963, § 19-2602.01; Laws 1965, c. 74, § 2, p. 300; Laws 1967, c. 87, § 1, p. 273; Laws 1969, c. 106, § 1, p. 484; Laws 1969, c. 107, § 1, p. 499; Laws 1989, LB 33, § 23; Laws 1997, LB 875, § 4; Laws 1999, LB 396, § 19; Laws 2001, LB 362, § 26; Laws 2009, LB339, § 1; Laws 2017, LB383, § 1; Laws 2018, LB874, § 6.
Effective date July 19, 2018.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

18-2103 Terms, defined.

For purposes of the Community Development Law, unless the context otherwise requires:

(1) Area of operation means and includes the area within the corporate limits of the city and such land outside the city as may come within the purview of sections 18-2123 and 18-2123.01;

(2) Authority means any community redevelopment authority created pursuant to section 18-2102.01 and a city or village which has created a community development agency pursuant to the provisions of section 18-2101.01 and does not include a limited community redevelopment authority;

(3) Blighted area means an area (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 plotted and subdivided property in an area is unimproved land that has been within the city 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 city or village 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. A redevelopment project involving a formerly used defense site as authorized under section 18-2123.01 shall not count towards the percentage limitations contained in this subdivision;

(4) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Community Development Law except for bonds issued pursuant to section 18-2142.04;

(5) Business means any private business located in an enhanced employment area;

(6) City means any city or incorporated village in the state;

(7) Clerk means the clerk of the city or village;

(8) Community redevelopment area means a substandard and blighted area which the community redevelopment authority designates as appropriate for a renewal project;

(9) Employee means a person employed at a business as a result of a redevelopment project;

(10) Employer-provided health benefit means any item paid for by the employer in total or in part that aids in the cost of health care services,

including, but not limited to, health insurance, health savings accounts, and employer reimbursement of health care costs;

(11) Enhanced employment area means an area not exceeding six hundred acres (a) within a community redevelopment area which is designated by an authority as eligible for the imposition of an occupation tax or (b) not within a community redevelopment area as may be designated under section 18-2142.04;

(12) Equivalent employees means the number of employees computed by (a) dividing the total hours to be paid in a year by (b) the product of forty times the number of weeks in a year;

(13) Extremely blighted area means a substandard and blighted area in which: (a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census is at least two hundred percent of the average rate of unemployment in the state during the same period; and (b) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area;

(14) Federal government means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;

(15) Governing body or local governing body means the city council, board of trustees, or other legislative body charged with governing the municipality;

(16) Limited community redevelopment authority means a community redevelopment authority created pursuant to section 18-2102.01 having only one single specific limited pilot project authorized;

(17) Mayor means the mayor of the city or chairperson of the board of trustees of the village;

(18) New investment means the value of improvements to real estate made in an enhanced employment area by a developer or a business;

(19) Number of new employees means the number of equivalent employees that are employed at a business as a result of the redevelopment project during a year that are in excess of the number of equivalent employees during the year immediately prior to the year that a redevelopment plan is adopted;

(20) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any authority, established pursuant to section 18-2102.01, property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with such authority;

(21) Occupation tax means a tax imposed under section 18-2142.02;

(22) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(23) Public body means the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;

(24) Real property means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein,

including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;

(25) Redeveloper means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract;

(26) Redevelopment contract means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan;

(27) Redevelopment plan means a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements;

(28) Redevelopment project means any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, enhancements to structures in the redevelopment plan area which exceed minimum building and design standards in the community and prevent the recurrence of substandard and blighted conditions, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; (f) to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings in accordance with the redevelopment plan; and (g) in a rural community or in an extremely blighted area

within a municipality that is not a rural community, to carry out construction of workforce housing;

(29) Redevelopment project valuation means the valuation for assessment of the taxable real property in a redevelopment project last certified for the year prior to the effective date of the provision authorized in section 18-2147;

(30) Rural community means any municipality in a county with a population of fewer than one hundred thousand inhabitants as determined by the most recent federal decennial census;

(31) Substandard area means an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare; and

(32) Workforce housing means:

(a) Housing that meets the needs of today's working families;

(b) Housing that is attractive to new residents considering relocation to a rural community;

(c) Owner-occupied housing units that cost not more than two hundred seventy-five thousand dollars to construct or rental housing units that cost not more than two hundred thousand dollars per unit to construct. For purposes of this subdivision (c), housing unit costs shall be updated annually by the Department of Economic Development based upon the most recent increase or decrease in the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics;

(d) Owner-occupied and rental housing units for which the cost to substantially rehabilitate exceeds fifty percent of a unit's assessed value; and

(e) Upper-story housing.

Source: Laws 1951, c. 224, § 3, p. 797; R.R.S.1943, § 14-1603; Laws 1957, c. 52, § 4, p. 249; Laws 1961, c. 61, § 3, p. 227; R.R.S. 1943, § 19-2603; Laws 1965, c. 74, § 3, p. 303; Laws 1969, c. 106, § 2, p. 488; Laws 1973, LB 299, § 3; Laws 1979, LB 158, § 2; Laws 1980, LB 986, § 2; Laws 1984, LB 1084, § 2; Laws 1993, LB 121, § 143; Laws 1997, LB 875, § 5; Laws 2007, LB562, § 2; Laws 2012, LB729, § 1; Laws 2013, LB66, § 2; Laws 2014, LB1012, § 1; Laws 2018, LB496, § 2; Laws 2018, LB874, § 7.

Effective date July 19, 2018.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB496, section 2, with LB874, section 7, to reflect all amendments.

18-2104 Exercise of powers; objective.

The governing body of a city, to the greatest extent it deems to be feasible in carrying out the provisions of the Community Development Law, shall afford maximum opportunity, consistent with the sound needs of the city as a whole, to the rehabilitation or redevelopment of the community redevelopment area by

private enterprises. The governing body of a city shall give consideration to this objective in exercising its powers under the Community Development Law, including the formulation of a workable program, the approval of community redevelopment plans consistent with the general plan for the development of the city, the exercise of its zoning powers, the enforcement of other laws, codes, and regulations, relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the providing of necessary public improvements.

Source: Laws 1951, c. 224, § 4(1), p. 800; R.R.S.1943, § 14-1604; Laws 1957, c. 52, § 5, p. 252; Laws 1961, c. 61, § 4, p. 230; R.R.S. 1943, § 19-2604; Laws 2018, LB874, § 8.
Effective date July 19, 2018.

18-2107 Authority; powers and duties.

An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Community Development Law, including the power:

(1) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with the Community Development Law;

(2) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the city and to undertake and carry out redevelopment projects within its area of operation;

(3) To arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a redevelopment project; and, notwithstanding anything to the contrary contained in the Community Development Law or any other provision of law, to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project provisions to fulfill such federally imposed conditions as it may deem reasonable and appropriate;

(4) Within its area of operation, to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, eminent domain, or otherwise any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear, or prepare for redevelopment any such property; to sell, lease for a term not exceeding ninety-nine years, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, or recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions, and conditions as the authority may deem necessary to prevent a recurrence of substandard

and blighted areas or to effectuate the purposes of the Community Development Law; to make any of the covenants, restrictions, or conditions of the foregoing contracts covenants running with the land and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in the authority to terminate such contracts and any interest in the property created pursuant thereto; to borrow money, issue bonds, and provide security for loans or bonds; to establish a revolving loan fund; to insure or provide for the insurance of any real or personal property or the operation of the authority against any risks or hazards, including the power to pay premiums on any such insurance; to enter into any contracts necessary to effectuate the purposes of the Community Development Law; and to provide grants, loans, or other means of financing to public or private parties in order to accomplish the rehabilitation or redevelopment in accordance with a redevelopment plan, except that the proceeds from indebtedness incurred for the purpose of financing a redevelopment project that includes the division of taxes as provided in section 18-2147 shall not be used to establish a revolving loan fund. No statutory provision with respect to the acquisition, clearance, or disposition of property by other public bodies shall restrict an authority exercising powers hereunder, in such functions, unless the Legislature shall specifically so state;

(5) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks or other banks may legally invest funds subject to their control; and to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, and such bonds redeemed or purchased shall be canceled;

(6) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, from the state, county, municipality, or other public body, or from any sources, public or private, including charitable funds, foundations, corporations, trusts, or bequests, for purposes of the Community Development Law, to give such security as may be required, and to enter into and carry out contracts in connection therewith; and notwithstanding any other provision of law, to include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the authority may deem reasonable and appropriate and which are not inconsistent with the purposes of the Community Development Law;

(7) Acting through one or more members of an authority or other persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority or excused from attendance; and to make available to appropriate agencies or public officials, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, demolishing unsafe or insanitary structures, or eliminating conditions of blight within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, safety, morals, or welfare;

(8) Within its area of operation, to make or have made all surveys, appraisals, studies, and plans, but not including the preparation of a general plan for the community, necessary to the carrying out of the purposes of the Community

Development Law and to contract or cooperate with any and all persons or agencies, public or private, in the making and carrying out of such surveys, appraisals, studies, and plans;

(9) To prepare plans and provide reasonable assistance for the relocation of families, business concerns, and others displaced from a redevelopment project area to permit the carrying out of the redevelopment project to the extent essential for acquiring possession of and clearing such area or parts thereof; and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(10) To make such expenditures as may be necessary to carry out the purposes of the Community Development Law; and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;

(11) To certify on or before September 20 of each year to the governing body of the city the amount of tax to be levied for the succeeding fiscal year for community redevelopment purposes, not to exceed two and six-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such city, which levy is subject to allocation under section 77-3443 on and after July 1, 1998. The governing body shall levy and collect the taxes so certified at the same time and in the same manner as other city 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 authority is deposited. Such proceeds shall be employed to assist in the defraying of any expenses of redevelopment plans and projects, including the payment of principal and interest on any bonds issued to pay the costs of any such plans and projects;

(12) To exercise all or any part or combination of powers granted in this section;

(13) To plan, undertake, and carry out neighborhood development programs consisting of redevelopment project undertakings and activities in one or more community redevelopment areas which are planned and carried out on the basis of annual increments in accordance with the Community Development Law for planning and carrying out redevelopment projects;

(14) To agree with the governing body of the city for the imposition of an occupation tax for an enhanced employment area; and

(15) To demolish any structure determined by the governing body of the city to be unsafe or unfit for human occupancy in accordance with section 18-1722.01.

Source: Laws 1951, c. 224, § 5, p. 801; R.R.S.1943, § 14-1607; Laws 1957, c. 52, § 7, p. 253; Laws 1961, c. 61, § 6, p. 232; R.R.S. 1943, § 19-2607; Laws 1969, c. 106, § 3, p. 491; Laws 1979, LB 158, § 3; Laws 1979, LB 187, § 79; Laws 1980, LB 986, § 3; Laws 1985, LB 52, § 1; Laws 1992, LB 1063, § 11; Laws 1992, Second Spec. Sess., LB 1, § 11; Laws 1993, LB 734, § 28; Laws 1995, LB 452, § 5; Laws 1997, LB 269, § 20; Laws 1997, LB 875, § 7; Laws 2007, LB562, § 3; Laws 2012, LB729, § 2; Laws 2018, LB874, § 9.

Effective date July 19, 2018.

18-2109 Redevelopment plan; preparation; requirements; planning commission or board; public hearing; notice; governing body; public hearing; notice.

(1) An authority shall not prepare a redevelopment plan for a redevelopment project area unless the governing body of the city in which such area is located has, by resolution adopted after the public hearings required under this section, declared such area to be a substandard and blighted area in need of redevelopment.

(2) Prior to making such declaration, the governing body of the city shall conduct or cause to be conducted a study or an analysis on whether the area is substandard and blighted and shall submit the question of whether such area is substandard and blighted to the planning commission or board of the city for its review and recommendation. The planning commission or board shall hold a public hearing on the question after giving notice of the hearing as provided in section 18-2115.01. Such notice shall include a map of sufficient size to show the area to be declared substandard and blighted or information on where to find such map and shall provide information on where to find copies of the substandard and blighted study or analysis conducted pursuant to this subsection. The planning commission or board shall submit its written recommendations to the governing body of the city within thirty days after the public hearing.

(3) Upon receipt of the recommendations of the planning commission or board, or if no recommendations are received within thirty days after the public hearing required under subsection (2) of this section, the governing body shall hold a public hearing on the question of whether the area is substandard and blighted after giving notice of the hearing as provided in section 18-2115.01. Such notice shall include a map of sufficient size to show the area to be declared substandard and blighted or information on where to find such map and shall provide information on where to find copies of the substandard and blighted study or analysis conducted pursuant to subsection (2) of this section. At the public hearing, all interested parties shall be afforded a reasonable opportunity to express their views respecting the proposed declaration. After such hearing, the governing body of the city may make its declaration.

(4) Copies of each substandard and blighted study or analysis conducted pursuant to subsection (2) of this section shall be posted on the city's public web site or made available for public inspection at a location designated by the city.

Source: Laws 1951, c. 224, § 6(2), p. 805; R.R.S.1943, § 14-1609; Laws 1957, c. 52, § 8, p. 257; Laws 1961, c. 61, § 7, p. 236; R.R.S. 1943, § 19-2609; Laws 1997, LB 875, § 8; Laws 2018, LB874, § 10.

Effective date July 19, 2018.

18-2113 Plan; considerations; cost-benefit analysis.

(1) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the city and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well

as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations or conditions of blight.

(2) The authority shall conduct a cost-benefit analysis for each redevelopment project whose redevelopment plan includes the division of taxes as provided in section 18-2147. In conducting the cost-benefit analysis, the authority shall use a cost-benefit model developed for use by local projects. Any cost-benefit model used by the authority shall consider and analyze the following factors:

(a) Tax shifts resulting from the division of taxes as provided in section 18-2147;

(b) Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project;

(c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;

(d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project;

(e) Impacts on the student populations of school districts within the city or village; and

(f) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project.

(3) Copies of each cost-benefit analysis conducted pursuant to subsection (2) of this section shall be posted on the city's public web site or made available for public inspection at a location designated by the city.

Source: Laws 1951, c. 224, § 6(6), p. 806; R.R.S.1943, § 14-1613; Laws 1957, c. 52, § 9, p. 257; R.R.S.1943, § 19-2613; Laws 1997, LB 875, § 9; Laws 1999, LB 774, § 1; Laws 2018, LB874, § 11. Effective date July 19, 2018.

18-2115 Redevelopment plan or substantial modification; public hearing; notice; governing board hearing; notice.

(1) The planning commission or board of the city shall hold a public hearing on any redevelopment plan or substantial modification thereof after giving notice of the hearing as provided in section 18-2115.01. Such notice shall specifically identify the area to be redeveloped under the plan, shall include a map of sufficient size to show the area to be redeveloped or information on where to find such map, and shall provide information on where to find copies of any cost-benefit analysis conducted pursuant to section 18-2113.

(2) After the hearing required under subsection (1) of this section, the governing body of the city shall hold a public hearing on any redevelopment plan or substantial modification thereof after giving notice of the hearing as provided in section 18-2115.01. Such notice shall specifically identify the area to be redeveloped under the plan, shall include a map of sufficient size to show

the area to be redeveloped or information on where to find such map, and shall provide information on where to find copies of any cost-benefit analysis conducted pursuant to section 18-2113. At the public hearing, all interested parties shall be afforded a reasonable opportunity to express their views respecting the proposed redevelopment plan.

Source: Laws 1951, c. 224, § 6(8), p. 807; R.R.S.1943, § 14-1615; Laws 1957, c. 52, § 10, p. 258; R.R.S.1943, § 19-2615; Laws 1995, LB 140, § 1; Laws 1997, LB 875, § 10; Laws 2014, LB679, § 2; Laws 2018, LB874, § 12.
Effective date July 19, 2018.

18-2115.01 Notice; manner.

(1) Public notice of any hearing required under section 18-2109 or 18-2115 shall be given by publication at least once a week for two consecutive weeks in a legal newspaper in or of general circulation in the community. The time of the hearing shall be at least ten days from the last publication.

(2)(a) Notice of any hearing required under section 18-2109 or 18-2115 shall be given to neighborhood associations that have registered under subsection (5) of this section as follows:

(i) For a hearing under section 18-2109, notice shall be given to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be declared substandard and blighted; and

(ii) For a hearing under section 18-2115, notice shall be given to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be redeveloped.

(b) Notice under this subsection shall be given at least ten days prior to the hearing in the manner requested by the neighborhood association. The notice shall be deemed given on the date it is sent.

(3)(a) Notice of any hearing required under section 18-2109 or 18-2115 shall be given to political subdivisions as follows:

(i) For a hearing under section 18-2109, notice shall be given to the president or chairperson of the governing body of each county, school district, community college area, educational service unit, and natural resources district in which the real property to be declared substandard and blighted is located; and

(ii) For a hearing under section 18-2115, notice shall be given to the president or chairperson of the governing body of each county, school district, community college area, educational service unit, and natural resources district in which the real property subject to the redevelopment plan or substantial modification thereof is located.

(b) Notice under this subsection shall be given at least ten days prior to the hearing by certified mail, return receipt requested. The notice shall be deemed given on the date it is mailed by certified mail.

(4) All notices given under this section shall describe the time, date, place, and purpose of the hearing.

(5) Each neighborhood association desiring to receive notice of any hearing required under section 18-2109 or 18-2115 shall register with the city's planning department or, if there is no planning department, with the city clerk. The

registration shall include a description of the area of representation of the association, the name of and contact information for the individual designated by the association to receive the notice on its behalf, and the requested manner of service, whether by email, first-class mail, or certified mail. Registration of the neighborhood association for purposes of this section shall be accomplished in accordance with such other rules and regulations as may be adopted and promulgated by the city.

Source: Laws 2018, LB874, § 13.

Effective date July 19, 2018.

18-2116 Plan; approval; findings.

(1) Following the public hearings required under section 18-2115, the governing body may approve a redevelopment plan if (a) it finds and documents in writing that the plan is feasible and in conformity with the general plan for the development of the city as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Community Development Law and (b) it finds and documents in writing that, if the plan uses funds authorized in section 18-2147, (i) the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing, (ii) the redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing, and (iii) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long-term best interest of the community impacted by the redevelopment project.

(2) In connection with the approval of any redevelopment plan which includes the designation of an enhanced employment area, the governing body may approve the redevelopment plan if it determines that any new investment within such enhanced employment area will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more shall provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been employed at least six months. In making such determination, the governing body may rely upon written undertakings provid-

ed by any redeveloper in connection with application for approval of the redevelopment plan.

Source: Laws 1951, c. 224, § 6(9), p. 807; R.R.S.1943, § 14-1616; Laws 1957, c. 52, § 11, p. 258; R.R.S.1943, § 19-2616; Laws 1997, LB 875, § 11; Laws 2007, LB562, § 5; Laws 2018, LB874, § 14. Effective date July 19, 2018.

18-2117.01 Plan; report to Property Tax Administrator; contents; compilation of data.

(1) On or before December 1 each year, each city which has approved one or more redevelopment plans which are financed in whole or in part through the division of taxes as provided in section 18-2147 shall provide a report to the Property Tax Administrator on each such redevelopment plan which includes the following information:

(a) A copy of the redevelopment plan and any amendments thereto, including the date upon which the redevelopment plan was approved, the effective date for dividing the ad valorem tax as provided to the county assessor pursuant to subsection (4) of section 18-2147, and the location and boundaries of the property in the redevelopment project; and

(b) A short narrative description of the type of development undertaken by the city or village with the financing and the type of business or commercial activity locating within the redevelopment project area as a result of the redevelopment project.

(2) The report required under subsection (1) of this section must be filed each year, regardless of whether the information in the report has changed, except that a city is not required to refile a copy of the redevelopment plan or an amendment thereto if such copy or amendment has previously been filed.

(3) The Property Tax Administrator shall compile a report for each active redevelopment project, based upon information provided by the cities pursuant to subsection (1) of this section and information reported by the county assessor or county clerk on the certificate of taxes levied pursuant to section 77-1613.01. Each report shall be electronically transmitted to the Clerk of the Legislature not later than March 1 each year. The report may include any recommendations of the Property Tax Administrator as to what other information should be included in the report from the cities so as to facilitate analysis of the uses, purposes, and effectiveness of tax-increment financing and the process for its implementation or to streamline the reporting process provided for in this section to eliminate unnecessary paperwork.

Source: Laws 1997, LB 875, § 12; Laws 1999, LB 774, § 2; Laws 2006, LB 808, § 1; Laws 2012, LB782, § 19; Laws 2018, LB874, § 15. Effective date July 19, 2018.

18-2117.02 Redevelopment projects; annual report; contents.

On or before May 1 of each year, each authority, or such other division or department of the city as designated by the governing body, shall compile information regarding the approval and progress of redevelopment projects that are financed in whole or in part through the division of taxes as provided in section 18-2147 and report such information to the governing body of the city and to the governing body of each county, school district, community

college area, educational service unit, and natural resources district whose property taxes are affected by such division of taxes. The report shall include, but not be limited to, the following information:

(1) The total number of redevelopment projects within the city that have been financed in whole or in part through the division of taxes as provided in section 18-2147;

(2) The total estimated project costs for all such redevelopment projects;

(3) A comparison between the initial projected valuation of property included in each such redevelopment project as described in the redevelopment contract and the assessed value of the property included in each such redevelopment project as of January 1 of the year of the report;

(4) The number of such redevelopment projects for which financing has been paid in full during the previous calendar year and for which taxes are no longer being divided pursuant to section 18-2147;

(5) The number of such redevelopment projects approved by the governing body in the previous calendar year;

(6) Information specific to each such redevelopment project approved by the governing body in the previous calendar year, including the project area, project type, amount of financing approved, and total estimated project costs; and

(7) The percentage of the city that has been designated as blighted.

Source: Laws 2018, LB874, § 16.

Effective date July 19, 2018.

18-2117.03 Redevelopment project; inclusion of certain costs.

A redevelopment project that includes the division of taxes as provided in section 18-2147 shall not provide for the reimbursement of costs incurred prior to approval of the redevelopment project, except for costs relating to:

(1) The preparation of materials and applications related to the redevelopment project;

(2) The preparation of a cost-benefit analysis conducted pursuant to section 18-2113;

(3) The preparation of a redevelopment contract;

(4) The preparation of bond and other financing instruments;

(5) Land acquisition and related due diligence activities, including, but not limited to, surveys and environmental studies; and

(6) Site demolition and preparation.

Source: Laws 2018, LB874, § 17.

Effective date July 19, 2018.

18-2117.04 City; retain plans and documents.

(1) On and after October 1, 2018, each city that has approved one or more redevelopment plans or redevelopment projects that are financed in whole or in part through the division of taxes as provided in section 18-2147 shall retain copies of (a) all such redevelopment plans and (b) all supporting documents associated with the redevelopment plans or redevelopment projects and with

any related substandard and blighted declaration under section 18-2109 that are received or generated by the city.

(2) The city shall retain the redevelopment plans and supporting documents described in subsection (1) of this section for the period of time required under any applicable records retention schedule adopted under the Records Management Act or for three years following the end of the last fiscal year in which ad valorem taxes are divided, whichever period is longer.

(3) For purposes of this section, supporting document includes any substandard and blighted study or analysis conducted pursuant to section 18-2109, any cost-benefit analysis conducted pursuant to section 18-2113, and any invoice, receipt, claim, or contract received or generated by the city that provides support for receipts or payments associated with the redevelopment plan or redevelopment project.

Source: Laws 2018, LB874, § 18.
Effective date July 19, 2018.

Cross References

Records Management Act, see section 84-1220.

18-2119 Redevelopment contract proposal; notice; considerations; acceptance; disposal of real property; contract relating to real estate within an enhanced employment area; recordation; division of taxes; certification by redeveloper; retention of documents.

(1) An authority shall, by public notice by publication once each week for two consecutive weeks in a legal newspaper having a general circulation in the city, prior to the consideration of any redevelopment contract proposal relating to real estate owned or to be owned by the authority, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking the redevelopment of an area, or any part thereof, which the governing body has declared to be in need of redevelopment. Such notice shall identify the area, and shall state that such further information as is available may be obtained at the office of the authority. The authority shall consider all redevelopment proposals and the financial and legal ability of the prospective redevelopers to carry out their proposals and may negotiate with any redevelopers for proposals for the purchase or lease of any real property in the redevelopment project area. The authority may accept such redevelopment contract proposal as it deems to be in the public interest and in furtherance of the purposes of the Community Development Law if the authority has, not less than thirty days prior thereto, notified the governing body in writing of its intention to accept such redevelopment contract proposal. Thereafter, the authority may execute such redevelopment contract in accordance with the provisions of section 18-2118 and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such redevelopment contract. In its discretion, the authority may, without regard to the foregoing provisions of this section, dispose of real property in a redevelopment project area to private redevelopers for redevelopment under such reasonable competitive bidding procedures as it shall prescribe, subject to the provisions of section 18-2118.

(2) In the case of any real estate owned by a redeveloper, the authority may enter into a redevelopment contract providing for such undertakings as the authority shall determine appropriate. Any such redevelopment contract relating to real estate within an enhanced employment area shall include a state-

ment of the redeveloper's consent with respect to the designation of the area as an enhanced employment area, shall be recorded with respect to the real estate owned by the redeveloper, and shall be binding upon all future owners of such real estate.

(3)(a) Prior to entering into a redevelopment contract pursuant to this section for a redevelopment plan that includes the division of taxes as provided in section 18-2147, the authority shall require the redeveloper to certify the following to the authority:

(i) Whether the redeveloper has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for a project located or to be located within the redevelopment project area;

(ii) Whether such application includes or will include, as one of the tax incentives, a refund of the city's local option sales tax revenue; and

(iii) Whether such application has been approved under the Nebraska Advantage Act.

(b) The authority may consider the information provided under subdivision (3)(a) of this section in determining whether to enter into the redevelopment contract.

(4) A redevelopment contract for a redevelopment plan or redevelopment project that includes the division of taxes as provided in section 18-2147 shall include a provision requiring that the redeveloper retain copies of all supporting documents that are associated with the redevelopment plan or redevelopment project and that are received or generated by the redeveloper for three years following the end of the last fiscal year in which ad valorem taxes are divided and provide such copies to the city as needed to comply with the city's retention requirements under section 18-2117.04. For purposes of this subsection, supporting document includes any cost-benefit analysis conducted pursuant to section 18-2113 and any invoice, receipt, claim, or contract received or generated by the redeveloper that provides support for receipts or payments associated with the division of taxes.

(5) A redevelopment contract for a redevelopment plan that includes the division of taxes as provided in section 18-2147 may include a provision requiring that all ad valorem taxes levied upon real property in a redevelopment project be paid before the taxes become delinquent in order for such redevelopment project to receive funds from such division of taxes.

Source: Laws 1951, c. 224, § 7(2), p. 809; R.R.S.1943, § 14-1619; R.R.S. 1943, § 19-2619; Laws 2007, LB562, § 6; Laws 2016, LB1059, § 1; Laws 2018, LB874, § 19.
Effective date July 19, 2018.

Cross References

Nebraska Advantage Act, see section 77-5701.

18-2122 Real property; eminent domain; effect of resolution.

An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for a redevelopment project or for its purposes under the Community Development Law after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. The procedure to

condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

When an authority has found and determined by resolution that certain real property described therein is necessary for a redevelopment project or for its purposes under the Community Development Law, the resolution shall be conclusive evidence that the acquisition of such real property is necessary for the purposes described therein.

Source: Laws 1951, c. 224, § 8, p. 810; R.R.S.1943, § 14-1622; Laws 1961, c. 61, § 11, p. 237; R.R.S.1943, § 19-2622; Laws 2018, LB874, § 20.
Effective date July 19, 2018.

18-2123.01 Redevelopment project with property outside corporate limits; formerly used defense site; agreement with county authorized.

(1) Notwithstanding any other provisions of the Community Development Law to the contrary, a city may undertake a redevelopment project that includes real property located outside the corporate limits of such city if the following requirements have been met:

(a) The real property located outside the corporate limits of the city is a formerly used defense site;

(b) The formerly used defense site is located within the same county as the city approving such redevelopment project;

(c) The formerly used defense site is located within a sanitary and improvement district;

(d) The governing body of the city approving such redevelopment project passes an ordinance stating such city's intent to annex the formerly used defense site in the future; and

(e) The redevelopment project has been consented to by any city exercising extraterritorial jurisdiction over the formerly used defense site.

(2) For purposes of this section, formerly used defense site means real property that was formerly owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the United States Secretary of Defense. Formerly used defense site does not include missile silos.

(3) The inclusion of a formerly used defense site in any redevelopment project under this section shall not result in:

(a) Any change in the service area of any electric utility or natural gas utility unless such change has been agreed to by the electric utility or natural gas utility serving the formerly used defense site at the time of approval of such redevelopment project; or

(b) Any change in the service area of any communications company as defined in section 77-2734.04 unless (i) such change has been agreed to by the communications company serving the formerly used defense site at the time of approval of such redevelopment project or (ii) such change occurs pursuant to sections 86-135 to 86-138.

(4) A city approving a redevelopment project under this section and the county in which the formerly used defense site is located may enter into an agreement pursuant to the Interlocal Cooperation Act in which the county

agrees to reimburse such city for any services the city provides to the formerly used defense site after approval of the redevelopment project.

Source: Laws 2013, LB66, § 3.

Cross References

Interlocal Cooperation Act, see section 13-801.

18-2125 Bonds; liability; exempt from taxation; anticipation notes; renewal notes; terms; declaration of intent.

Neither the members of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the authority, and such bonds and obligations shall so state on their face, shall not be a debt of the city and the city shall not be liable on such bonds, except to the extent authorized by sections 18-2147 to 18-2150, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority acquired for the purposes of the Community Development Law, except to the extent authorized by sections 18-2147 to 18-2150. Except to the extent otherwise authorized, the bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes. All bonds shall be general obligations of the authority issuing same and shall be payable out of any revenue, income, receipts, proceeds, or other money of the authority, except as may be otherwise provided in the instruments themselves.

An authority shall have power from time to time to issue bond anticipation notes, referred to as notes herein, and from time to time to issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not exceeding in the aggregate at any time outstanding the amount of bonds then or theretofore authorized. Payment of such notes shall be made from any money or revenue which the authority may have available for such purpose or from the proceeds of the sale of bonds of the authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the authority, subject to prior pledges thereof, if any, for the payment of such notes, and may in addition secure the notes in the same manner as herein provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any authority shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes and bonds in the future. Such notes shall also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of such notes, of bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in an amount deemed by the issuing authority sufficient to provide for the payment of the notes in full at the maturity thereof. The authority may provide in the collateral agreement that the notes may be exchanged for bonds held as collateral security for the notes, or that the trustee may sell the bonds if the notes are not otherwise paid at maturity, and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate set by the

authority, and shall be sold at such price as shall cause an interest cost thereon not to exceed such rate.

It is the intention hereof that any pledge of revenue, income, receipts, proceeds, or other money made by an authority for the payment of bonds or notes shall be valid and binding from the time such pledge is made; that the revenue, income, receipts, proceeds, and other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

Source: Laws 1951, c. 224, § 10(2), p. 811; R.R.S.1943, § 14-1625; Laws 1961, c. 61, § 14, p. 239; R.R.S.1943, § 19-2625; Laws 1969, c. 51, § 70, p. 317; Laws 1979, LB 158, § 6; Laws 2018, LB874, § 21.

Effective date July 19, 2018.

18-2127 Bonds; sale.

The bonds may be sold by the authority in such manner and for such price as the authority may determine, at par or above par, at private sale or at public sale after notice published prior to such sale in a legal newspaper having general circulation in the municipality, or in such other medium of publication as the authority may deem appropriate, or may be exchanged by the authority for other bonds issued by it under the Community Development Law. Bonds which are issued under this section may be sold by the authority to the federal government at private sale at par or above par, and, in the event that less than all of the authorized principal amount of such bonds is sold by the authority to the federal government, the balance or any portion of the balance may be sold by the authority at private sale at par or above par.

Source: Laws 1951, c. 224, § 10(4), p. 812; R.R.S.1943, § 14-1627; R.R.S. 1943, § 19-2627; Laws 1979, LB 158, § 7; Laws 2018, LB874, § 22.

Effective date July 19, 2018.

18-2129 Bonds; actions; effect.

In any suit, action, or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of the Community Development Law.

Source: Laws 1951, c. 224, § 10(6), p. 813; R.R.S.1943, § 14-1629; R.R.S. 1943, § 19-2629; Laws 2018, LB874, § 23.

Effective date July 19, 2018.

18-2133 Bonds; obligee; causes of action.

An obligee of an authority shall have the right in addition to all other rights which may be conferred upon such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity to compel said authority and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements to the authority and the fulfillment of all duties imposed upon the authority by the Community Development Law; and

(2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority.

Source: Laws 1951, c. 224, § 13, p. 816; R.R.S.1943, § 14-1633; R.R.S. 1943, § 19-2633; Laws 2018, LB874, § 24.
Effective date July 19, 2018.

18-2134 Bonds; who may purchase.

All public officers, municipal corporations, political subdivisions, and public bodies; all banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by an authority pursuant to the Community Development Law or by any public housing or redevelopment authority or commission, or agency or any other public body in the United States for redevelopment purposes, when such bonds and other obligations are secured by an agreement between the issuing agency and the federal government in which the issuing agency agrees to borrow from the federal government and the federal government agrees to lend to the issuing agency, prior to the maturity of such bonds or other obligations, money in an amount which, together with any other money irrevocably committed to the payment of interest on such bonds or other obligations, will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which money under the terms of the agreement is required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity, and such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. However, nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in the selection of securities.

Source: Laws 1951, c. 224, § 14, p. 816; R.R.S.1943, § 14-1634; R.R.S. 1943, § 19-2634; Laws 2018, LB874, § 25.
Effective date July 19, 2018.

18-2137 Property; exempt from taxation; payments in lieu of taxes.

The property of an authority is declared to be public property used for essential public and governmental purposes and shall be exempt from all taxes. Whenever such authority shall purchase or acquire real property pursuant to the Community Development Law, the authority shall annually, so long as it shall continue to own such property, pay out of its revenue to the State of Nebraska, county, city, township, school district, or other taxing subdivision in which such real property is located, in lieu of taxes, a sum equal to the amount which such state, county, city, township, school district or other taxing subdivision received from taxation from such real property during the year immediately preceding the purchase or acquisition of such real property by the authority. The county board of equalization may, in any year subsequent to the purchase or acquisition of such property by the authority, determine the amount that said authority shall pay out of its revenue to the State of Nebraska and its several governmental subdivisions in lieu of taxes, which sum shall be as justice and equity may require, notwithstanding the amount which the state and its governmental subdivisions may have received from taxation during the year immediately preceding the purchase or acquisition of such property. With respect to any property in a redevelopment project, the tax exemption provided herein shall terminate when the authority sells, leases, or otherwise disposes of such property to a redeveloper for redevelopment. The members of the authority shall not incur any personal liability by reason of the making of such payments.

Source: Laws 1951, c. 224, § 16(2), p. 818; R.R.S.1943, § 14-1637; Laws 1957, c. 52, § 14, p. 260; R.R.S.1943, § 19-2637; Laws 2018, LB874, § 26.
Effective date July 19, 2018.

18-2138 Public body; cooperate in planning; powers.

In addition to any other provisions governing any public body set forth in the Community Development Law, for the purpose of aiding and cooperating in the planning, undertaking, or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine: (1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to an authority; (2) cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project; (3) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places, which it is otherwise empowered to undertake; (4) plan or replan, zone or rezone any part of the public body, or make exceptions from building regulations and ordinances if such functions are of the character which the public body is otherwise empowered to perform; (5) cause administrative and other services to be furnished to the authority of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes; (6) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (7) do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan; (8) lend, grant, or contribute funds to an authority; (9) employ any funds belonging to or within the control of such public body, including funds derived from the

sale or furnishing of property, service, or facilities to an authority, in the purchase of the bonds or other obligations of an authority and, as the holder of such bonds or other obligations, exercise the rights connected therewith; and (10) enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with an authority respecting action to be taken by such public body pursuant to any of the powers granted by the Community Development Law. If at any time title to, or possession of, any redevelopment project is held by any public body or governmental agency, other than the authority, authorized by law to engage in the undertaking, carrying out or administration of redevelopment projects, including any agency or instrumentality of the United States of America, the provisions of such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency.

Source: Laws 1951, c. 224, § 17(1), p. 818; R.R.S.1943, § 14-1638; R.R.S. 1943, § 19-2638; Laws 1979, LB 158, § 8; Laws 2018, LB874, § 27.

Effective date July 19, 2018.

18-2140 Estimate of expenditures; cities; grant funds; levy taxes; issue bonds.

An authority may, at such time as it may deem necessary, file with the governing body an estimate of the amounts necessary to be appropriated by the governing body to defray the expense of the authority. The governing body of such city is hereby authorized, in its discretion, to appropriate from its general fund and to place at the disposal of the authority an amount sufficient to assist in defraying such expense. Any city located within the area of operation of an authority may grant funds to an authority for the purpose of aiding such authority in carrying out any of its powers and functions under the Community Development Law. To obtain funds for this purpose, the city may levy taxes and may issue and sell its bonds. Any bonds to be issued by the city pursuant to the provisions of this section shall be issued in the manner and within the limitations, except as otherwise provided by the Community Development Law, prescribed by the laws of this state for the issuance and authorization of bonds by a city for any public purpose.

Source: Laws 1951, c. 224, § 18, p. 819; R.R.S.1943, § 14-1640; Laws 1961, c. 61, § 15, p. 241; R.R.S.1943, § 19-2640; Laws 2018, LB874, § 28.

Effective date July 19, 2018.

18-2141 Instrument of conveyance; execution; effect.

Any instrument executed by an authority and purporting to convey any right, title, or interest in any property under the Community Development Law shall be conclusive evidence of compliance with the Community Development Law insofar as title or other interest of any bona fide purchasers, lessees, or other transferees of such property is concerned.

Source: Laws 1951, c. 224, § 19, p. 820; R.R.S.1943, § 14-1641; R.R.S. 1943, § 19-2641; Laws 2018, LB874, § 29.

Effective date July 19, 2018.

18-2142.01 Validity and enforceability of bonds and agreements; presumption.

(1) In any suit, action, or proceeding involving the validity or enforceability of any bond of a city, village, or authority 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 city, village, or authority to aid in financing a redevelopment project shall be conclusively deemed to have been authorized for such purpose and such redevelopment project shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of the Community Development Law.

(2) In any suit, action, or proceeding involving the validity or enforceability of any agreement of a city, village, or authority brought after the lapse of thirty days after the agreement has been formally entered into, any such agreement reciting in substance that it has been entered into by the city, village, or authority to provide financing for an approved redevelopment 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 the purposes and provisions of the Community Development Law.

Source: Laws 1997, LB 875, § 16; Laws 2018, LB874, § 30.
Effective date July 19, 2018.

18-2142.02 Enhanced employment area; redevelopment project; levy of general business occupation tax authorized; governing body; powers; occupation tax; power to levy; exceptions.

A city may levy a general business occupation tax upon the businesses and users of space within an enhanced employment area for the purpose of paying all or any part of the costs and expenses of any redevelopment project within such enhanced employment area. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any such occupation tax agreed to by the authority and the city shall remain in effect so long as the authority has bonds outstanding which have been issued stating such occupation tax as an available source for payment.

Source: Laws 2007, LB562, § 8; Laws 2014, LB474, § 6.

18-2142.04 Enhanced employment area; authorized work within area; levy of general business occupation tax authorized; exceptions; governing body; powers; revenue bonds authorized; terms and conditions.

(1) For purposes of this section:

(a) Authorized work means the performance of any one or more of the following purposes within an enhanced employment area designated pursuant to this section:

(i) The acquisition, construction, maintenance, and operation of public off-street parking facilities for the benefit of the enhanced employment area;

(ii) Improvement of any public place or facility in the enhanced employment area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(iii) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(iv) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the enhanced employment area;

(v) Creation and implementation of a plan for improving the general architectural design of public areas in the enhanced employment area;

(vi) The development of any public activities and promotion of public events, including the management, promotion, and advocacy of retail trade activities or other promotional activities, in the enhanced employment area;

(vii) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Community Development Law;

(viii) Any other project or undertaking for the betterment of the public facilities in the enhanced employment area, whether the project is capital or noncapital in nature;

(ix) Enforcement of parking regulations and the provision of security within the enhanced employment area; or

(x) Employing or contracting for personnel, including administrators for any improvement program under the Community Development Law, and providing for any service as may be necessary or proper to carry out the purposes of the Community Development Law;

(b) Employee means a person employed at a business located within an enhanced employment area; and

(c) Number of new employees means the number of equivalent employees that are employed at a business located within an enhanced employment area designated pursuant to this section during a year that are in excess of the number of equivalent employees during the year immediately prior to the year the enhanced employment area was designated pursuant to this section.

(2) If an area is not blighted or substandard, a city may designate an area as an enhanced employment area if the governing body determines that new investment within such enhanced employment area will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five

thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more shall provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been employed at least six months. In making such determination, the governing body may rely upon written undertakings provided by any owner of property within such area.

(3) Upon designation of an enhanced employment area under this section, a city may levy a general business occupation tax upon the businesses and users of space within such enhanced employment area for the purpose of paying all or any part of the costs and expenses of authorized work within such enhanced employment area. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any occupation tax levied by the city under this section shall remain in effect so long as the city has bonds outstanding which have been issued under the authority of this section and are secured by such occupation tax or that state such occupation tax as an available source for payment. The total amount of occupation taxes levied shall not exceed the total costs and expenses of the authorized work including the total debt service requirements of any bonds the proceeds of which are expended for or allocated to such authorized work. The assessments or taxes levied must be specified by ordinance and the proceeds shall not be used for any purpose other than the making of such improvements and for the repayment of bonds issued in whole or in part for the financing of such improvements. The authority to levy the general business occupation tax contained in this section and the authority to issue bonds secured by or payable from such occupation tax shall be independent of and separate from any occupation tax referenced in section 18-2103.

(4) A city may issue revenue bonds for the purpose of defraying the cost of authorized work and to secure the payment of such bonds with the occupation tax revenue described in this section. Such revenue bonds may be issued in one 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. The following shall apply to any such bonds:

(a) Such bonds shall be limited obligations of the city. Bonds and interest on such bonds, issued under the authority of this section, shall not constitute nor give rise to a pecuniary liability of the city or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds;

(b) Such bonds may (i) be executed and delivered at any time and from time to time, (ii) be in such form and denominations, (iii) be of such tenor, (iv) be payable in such installments and at such time or times not exceeding twenty years from their date, (v) be payable at such place or places, (vi) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (vii) be redeemable prior to maturity, with or without premium, and (viii) contain such provisions as shall be deemed in the best interest of the city and provided for in the proceedings of the governing body under which the bonds shall be authorized to be issued;

(c) The authorization, terms, issuance, execution, or delivery of such bonds shall not be subject to sections 10-101 to 10-126; and

(d) Such bonds may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The city may pay all expenses, premiums, and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale, and issuance thereof from the proceeds or the sale of the bonds or from the revenue of the occupation tax described in this section.

Source: Laws 2007, LB562, § 10; Laws 2014, LB474, § 7.

18-2142.05 Construction of workforce housing; governing body; duties.

Prior to approving a redevelopment project to carry out the construction of workforce housing, a governing body shall (1) receive a housing study which is current within twenty-four months, (2) prepare an incentive plan for construction of housing in the municipality targeted to house existing or new workers, (3) hold a public hearing on such incentive plan with notice which complies with the conditions set forth in section 18-2115.01, and (4) after the public hearing find that such incentive plan is necessary to prevent the spread of blight and substandard conditions within the municipality, will promote additional safe and suitable housing for individuals and families employed in the municipality, and will not result in the unjust enrichment of any individual or company. A public hearing held under this section shall be separate from any public hearing held under section 18-2115.

Source: Laws 2018, LB496, § 3.

Effective date July 19, 2018.

18-2143 Community Development Law, how construed.

The powers conferred by the Community Development Law shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provision of the laws of the State of Nebraska with reference to the matters covered in the Community Develop-

ment Law and 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. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of the Community Development Law, or the application thereof to any person or circumstances is held unconstitutional or invalid, it shall not affect the other provisions of the Community Development Law or the application of such provision to other persons or circumstances. The Community Development Law and all grants of power, authority, rights, or discretion made to a city and to an authority created under the Community Development Law shall be liberally construed, and all incidental powers necessary to carry into effect the Community Development Law are hereby expressly granted to and conferred upon a city or an authority created pursuant thereto.

Source: Laws 1951, c. 224, § 23, p. 820; R.R.S.1943, § 14-1643; Laws 1961, c. 61, § 17, p. 242; R.R.S.1943, § 19-2643; Laws 2018, LB874, § 31.
Effective date July 19, 2018.

18-2144 Community Development Law; controlling over other laws and city charters.

The Community Development Law shall be full authority for the creation of a community redevelopment authority by a city or village, and for the exercise of the powers therein granted to a city or village and to such authority, and shall also be full authority for the creation of a community development agency by a city or village, and for the exercise of the powers therein granted to a city or village for such purpose, and no action, proceeding, or election shall be required prior to the creation of a community redevelopment authority or community development agency or to authorize the exercise of any of the powers granted in the Community Development Law, except as specifically provided in the Community Development Law, any provision of law or of any city charter or village law to the contrary notwithstanding.

No proceedings for the issuance of bonds of an authority or of a city or village for its community development agency shall be required other than those required by the Community Development Law; and the provisions of all other laws and city charters, if any, relative to the terms and conditions for the issuance, payment, redemption, registration, sale or delivery of bonds of public bodies, corporations, or political subdivisions of this state shall not be applicable to bonds issued by an authority pursuant to the Community Development Law.

Insofar as the provisions of the Community Development Law are inconsistent with the provisions of any other law or of any city charter, if any, the provisions of the Community Development Law shall be controlling.

Source: Laws 1957, c. 52, § 15, p. 261; Laws 1961, c. 61, § 18, p. 243; R.R.S.1943, § 19-2644; Laws 1973, LB 299, § 4; Laws 1979, LB 158, § 9; Laws 2018, LB874, § 32.
Effective date July 19, 2018.

18-2145 Limited community redevelopment authority; laws applicable.

The provisions of the Community Development Law that are not in conflict with the provisions relating to limited community redevelopment authorities

and that are necessary or convenient to carry out the powers expressly conferred upon limited community redevelopment authorities shall apply to limited community redevelopment authorities.

Source: Laws 1969, c. 106, § 5, p. 498; Laws 2018, LB874, § 33.
Effective date July 19, 2018.

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) To the extent that a redevelopment plan authorizes the division of ad valorem taxes levied upon only a portion of the real property included in such redevelopment plan, any improvements funded by such division of taxes shall be related to the redevelopment plan that authorized such division of taxes.

(3) 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. This subsection shall not apply to a redevelopment project involving a formerly used defense site as authorized in section 18-2123.01.

(4) 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; Laws 2013, LB66, § 4; Laws 2018, LB874, § 34.
Effective date July 19, 2018.

18-2153 Sections, how construed.

The powers conferred by sections 18-2147 to 18-2153 shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provision of the laws of the State of Nebraska with reference to the matters covered in such sections. The provisions of such sections and all grants of power, authority, rights, or discretion to a city or village and to an authority created under the Community Development Law shall be liberally construed, and all incidental powers necessary to carry into effect such sections are hereby expressly granted to and conferred upon a city or village or an authority created pursuant to the Community Development Law.

Source: Laws 1979, LB 158, § 16; Laws 1991, LB 15, § 9; Laws 1999, LB 774, § 4; Laws 2018, LB874, § 35.
Effective date July 19, 2018.

ARTICLE 27

MUNICIPAL ECONOMIC DEVELOPMENT

Section

- 18-2701. Act, how cited.
- 18-2703. Definitions, where found.
- 18-2705. Economic development program, defined.
- 18-2709. Qualifying business, defined.
- 18-2709.01. Workforce housing plan, defined.
- 18-2710.02. Economic development program; workforce housing plan; proposed plan; contents.
- 18-2710.03. Economic development program; applicant; certification regarding tax incentives; city consider information.
- 18-2713. Election; procedures.
- 18-2714. Economic development program; established by ordinance; amendment; repeal; procedures.
- 18-2715. Citizen advisory review committee; membership; meetings; powers; unauthorized disclosure of information; penalty.
- 18-2717. Appropriations; restrictions.

18-2701 Act, how cited.

Sections 18-2701 to 18-2739 shall be known and may be cited as the Local Option Municipal Economic Development Act.

Source: Laws 1991, LB 840, § 1; Laws 1993, LB 732, § 16; Laws 1995, LB 207, § 1; Laws 2001, LB 827, § 9; Laws 2012, LB863, § 1; Laws 2016, LB1059, § 2.

18-2703 Definitions, where found.

For purposes of the Local Option Municipal Economic Development Act, the definitions found in sections 18-2703.01 to 18-2709.01 shall be used.

Source: Laws 1991, LB 840, § 4; Laws 2001, LB 827, § 11; Laws 2016, LB1059, § 3.

18-2705 Economic development program, defined.

(1) Economic development program means any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future.

(2) An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying businesses; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans to qualifying businesses for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such options; grants or loans to qualifying businesses to provide relocation incentives for new residents; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support of city staff to implement the economic development program or the contracting of such to an outside entity.

(3) For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income.

(4) For cities of the first and second class and villages, an economic development program may also include grants, loans, or funds for rural infrastructure development as defined in section 66-2102.

(5) For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing as part of a workforce housing plan.

(6) An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

Source: Laws 1991, LB 840, § 6; Laws 1993, LB 732, § 17; Laws 1995, LB 207, § 3; Laws 2001, LB 827, § 13; Laws 2012, LB1115, § 8; Laws 2013, LB295, § 1; Laws 2015, LB150, § 1; Laws 2016, LB1059, § 4.

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; tourism-related activities; or the production of films, including feature, independent, and documentary films, commercials, and television programs.

(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 as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, 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.

(5) Qualifying business does not include a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the first and second class and villages for rural infrastructure development as provided for in subsection (4) of section 18-2705.

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; Laws 2012, LB863, § 2; Laws 2015, LB150, § 2; Laws 2017, LB113, § 22.

18-2709.01 Workforce housing plan, defined.

Workforce housing plan means a program to construct or rehabilitate single-family housing or market rate multi-family housing which is designed to address a housing shortage that impairs the ability of the city to attract new businesses or impairs the ability of existing businesses to recruit new employees.

Source: Laws 2016, LB1059, § 5.

18-2710.02 Economic development program; workforce housing plan; proposed plan; contents.

If the proposed economic development program involves the making of grants or loans for the construction or rehabilitation for sale or lease of housing as part of a workforce housing plan, the proposed plan shall include:

(1) An assessment of current housing stock in the city, including both single-family and market rate multi-family housing;

(2) Whether the plan will also include housing for persons of low or moderate income under section 18-2710.01;

(3) Such other factors, as determined by the city, which are particularly relevant in assessing the conditions faced by existing businesses in recruiting new employees; and

(4) Such other factors, as determined by the city, which are particularly relevant in assessing the conditions faced by persons seeking new or rehabilitated housing in the city.

Source: Laws 2016, LB1059, § 6.

18-2710.03 Economic development program; applicant; certification regarding tax incentives; city consider information.

(1) At the time that a qualifying business applies to a city to participate in an economic development program, the qualifying business shall certify the following to the city:

(a) Whether the qualifying business has filed or intends to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for the same project for which the qualifying business is seeking financial assistance under the Local Option Municipal Economic Development Act;

(b) Whether such application includes or will include, as one of the tax incentives, a refund of the city's local option sales tax revenue; and

(c) Whether such application has been approved under the Nebraska Advantage Act.

(2) The city may consider the information provided under this section in determining whether to provide financial assistance to the qualifying business under the Local Option Municipal Economic Development Act.

Source: Laws 2016, LB1059, § 8.

Cross References

Nebraska Advantage Act, see section 77-5701.

18-2713 Election; procedures.

Before adopting an economic development program, a city shall submit the question of its adoption to the registered voters at an election. The governing body of the city shall order the submission of the question by filing a certified copy of the resolution proposing the economic development program with the election commissioner or county clerk not later than fifty days prior to a special election or a municipal primary or general election which is not held at the statewide primary or general election or not later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. The question on the ballot shall briefly set out the terms, conditions, and goals of the proposed economic development program, including the length of time during which the program will be in existence, the year or years within which the funds from local sources of revenue are to be collected, the source or sources from which the funds are to be collected, the total amount to be collected for the program from local sources of revenue, and whether the city proposes to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program. The ballot question shall also specify whether additional funds from other noncity sources will be sought beyond those derived from local sources of revenue. In addition to all other information, if the funds are to be derived from the city's property tax, the ballot question shall state the present annual cost of the economic development program per ten thousand dollars of assessed valuation based upon the most recent valuation of the city certified to the Property Tax Administrator pursuant to section 77-1613.01. The ballot question shall state: "Shall the city of (name of the city) establish an economic development program as described here by appropriating annually from local sources of revenue \$. for years?". If the only city revenue source for the proposed economic development program is a local option sales tax that has not yet been approved at an election, the ballot question specifications in this section may be repeated in the sales tax ballot question.

If a majority of those voting on the issue vote in favor of the question, the governing body may implement the proposed economic development program upon the terms set out in the resolution. If a majority of those voting on the economic development program vote in favor of the question when the only city revenue source is a proposed sales tax and a majority of those voting on the local option sales tax vote against the question, the governing body shall not implement the economic development program, and it shall become null and void. If a majority of those voting on the issue vote against the question, the governing body shall not implement the economic development program.

Source: Laws 1991, LB 840, § 14; Laws 1993, LB 732, § 22; Laws 1995, LB 490, § 23; Laws 2017, LB451, § 1.

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 after the governing body of the city (a) gives notice of and holds at least one public hearing on the proposed changes, (b) approves the proposed changes by a two-thirds vote of the members of such governing body, and (c) except as provided in subsection (3) of this section, submits the proposed changes to a new vote of the registered voters of the city in the manner provided in section 18-2713.

(3) A new vote of the registered voters of the city is not required for the following types of amendments to an economic development program:

(a) An amendment adding a type of qualifying business to those that are eligible to participate in the economic development program or removing a type of qualifying business from those that are eligible to participate in such program if such addition or removal is recommended by the citizen advisory review committee established under section 18-2715;

(b) An amendment making corrective changes to comply with the Local Option Municipal Economic Development Act; or

(c) An amendment making corrective changes to comply with any other existing or future state or federal law.

(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; Laws 2016, LB1059, § 7.

18-2715 Citizen advisory review committee; membership; meetings; powers; unauthorized disclosure of information; penalty.

(1) The ordinance establishing the economic development program shall provide for the creation of a citizen advisory review committee. The committee shall consist of not less than five or more than ten registered voters of the city who shall be appointed to the committee by the mayor or chairperson subject to approval by the governing body of the city. At least one member of the committee shall have expertise or experience in the field of business finance or accounting. The ordinance shall designate an appropriate city official or employee with responsibility for the administration of the economic development program to serve as an ex officio member of the committee with responsibility for assisting the committee and providing it with necessary information and advice on the economic development program.

(2) No member of the citizen advisory review committee shall be an elected or appointed city official, a member of any planning commission created under section 19-925, an employee of the city, a participant in a decisionmaking position regarding expenditures of program funds, or an official or employee of any qualifying business receiving financial assistance under the economic development program or of any financial institution participating directly in the economic development program.

(3) The ordinance shall provide for regular meetings of the citizen advisory review committee to review the functioning and progress of the economic development program and to advise the governing body of the city with regard to the program. At least once in every six-month period after the effective date of the ordinance, the committee shall report to the governing body on its findings and suggestions at a public hearing called for that purpose.

(4) Members of the citizen advisory review committee, in their capacity as members and consistent with their responsibilities as members, may be permitted access to business information received by the city in the course of its administration of the economic development program, which information would otherwise be confidential (a) under section 84-712.05, (b) by agreement with a qualifying business participating in the economic development program, or (c) under any ordinance of the city providing access to such records to members of the committee and guaranteeing the confidentiality of business information received by reason of its administration of the economic development program. Such ordinance may provide that unauthorized disclosure of any business information which is confidential under section 84-712.05 shall be a Class III misdemeanor.

Source: Laws 1991, LB 840, § 16; Laws 1993, LB 732, § 23; Laws 2017, LB383, § 2.

18-2717 Appropriations; restrictions.

(1) 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.

(2) Notwithstanding the provisions of subsection (1) 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.

(3) The restrictions on the appropriation of funds from local sources of revenue as set out in subsections (1) and (2) 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.

(4) 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; Laws 2018, LB614, § 1.
Effective date July 19, 2018.

ARTICLE 29

URBAN GROWTH DISTRICTS

Section

18-2901. Urban growth district; authorized; urban growth bonds and refunding bonds.

18-2901 Urban growth district; authorized; urban growth bonds and refunding bonds.

(1) The Legislature recognizes that there is a growing concern among municipalities that infrastructure costs and needs are great, especially in areas that are on the edge of or near the municipal boundaries and in need of development resources, and the governing bodies of municipalities must identify and develop financing mechanisms to respond to all infrastructure needs in an effective and efficient manner. The authorization of urban growth bonds, with local option sales and use tax revenue identified as the source of financing for the bonds, will encourage municipalities to use such revenue to bond infrastructure needs.

(2) The governing body of a municipality may create one or more urban growth districts for the purpose of using local option sales and use tax revenue

to finance municipal infrastructure needs. An urban growth district may be in an area along the edge of a municipality’s boundary or in any other growth area designated by the governing body, except that the territory of each urban growth district shall be (a) within the municipality’s corporate limits and (b) outside the municipality’s corporate limits as they existed as of the date twenty years prior to the creation of the urban growth district.

(3) The governing body shall establish an urban growth district by ordinance. The ordinance shall include:

(a) A description of the boundaries of the proposed district; and

(b) The local option sales tax rate and estimated urban growth local option sales and use tax revenue anticipated to be identified as a result of the creation of the district.

(4) Any municipality that has established an urban growth district may, by ordinance approved by a vote of two-thirds of the members of its governing body, authorize the issuance of urban growth bonds and refunding bonds to finance and refinance the construction or improvement of roads, streets, streetscapes, bridges, and related structures within the urban growth district and in any other area of the municipality. The bonds shall be secured as to payment by a pledge, as determined by the municipality, of the urban growth local option sales and use tax revenue and shall mature not later than twenty-five years after the date of issuance. Annual debt service on all bonds issued with respect to an urban growth district pursuant to this section shall not exceed the urban growth local option sales and use tax revenue with respect to such district for the fiscal year prior to the fiscal year in which the current series of such bonds are issued. For purposes of this section, urban growth local option sales and use tax revenue means the municipality’s total local option sales and use tax revenue multiplied by the ratio of the area included in the urban growth district to the total area of the municipality.

(5) The issuance of urban growth bonds by any municipality under the authority of this section shall not be subject to any charter or statutory limitations of indebtedness or be subject to any restrictions imposed upon or conditions precedent to the exercise of the powers of municipalities to issue bonds or evidences of indebtedness which may be contained in such charters or other statutes. Any municipality which issues urban growth bonds under the authority of this section shall levy property taxes upon all the taxable property in the municipality at such rate or rates within any applicable charter, statutory, or constitutional limitations as will provide funds which, together with the urban growth local option sales and use tax revenue pledged to the payment of such bonds and any other money made available and used for that purpose, will be sufficient to pay the principal of and interest on such urban growth bonds as they severally mature.

Source: Laws 2009, LB85, § 1; Laws 2017, LB131, § 1.

ARTICLE 30

PLANNED UNIT DEVELOPMENT

Section

18-3001. Planned unit development ordinance; authorized; planned unit development approval; conditions.

18-3001 Planned unit development ordinance; authorized; planned unit development approval; 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) Except as provided in subsection (6) of this section, 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.

(6) A city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census 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 the county's planning department and public works department for review.

Source: Laws 1983, LB 135, § 1; R.S.1943, (2007), § 19-4401; Laws 2011, LB146, § 1; Laws 2016, LB875, § 1; Laws 2017, LB74, § 4.

ARTICLE 31

MUNICIPAL CUSTODIANSHIP FOR DISSOLVED HOMEOWNERS ASSOCIATIONS ACT

Section

- 18-3101. Act, how cited.
- 18-3102. Terms, defined.
- 18-3103. Municipality; action to be appointed custodian.
- 18-3104. Appointment of municipality as custodian; findings; hearing; powers; compensation; costs; lien; recording; foreclosure; termination of custodianship; withdrawal or termination of custodianship.
- 18-3105. Dissolved homeowners association; reinstatement; procedure; fee; Secretary of State; duties; effect of reinstatement.

18-3101 Act, how cited.

Sections 18-3101 to 18-3105 shall be known and may be cited as the Municipal Custodianship for Dissolved Homeowners Associations Act.

Source: Laws 2015, LB304, § 1.

18-3102 Terms, defined.

For purposes of the Municipal Custodianship for Dissolved Homeowners Associations Act, unless the context otherwise requires:

(1) Common area means lot or outlot within a plat or subdivision of real property including the improvements thereon owned or otherwise maintained, cared for, or administered by the homeowners association for the common use, benefit, and enjoyment of its members;

(2) Homeowners association means a nonprofit corporation duly incorporated under the laws of the State of Nebraska for the purpose of enforcing the restrictive covenants established upon the real property legally described in the articles of incorporation which is located within the corporate limits of a municipality, each member of which is an owner of a lot located within the plat or subdivision and, by virtue of membership or ownership of a lot, is obligated to pay costs for the administration, maintenance, and care of the common area within the plat or subdivision. Homeowners association includes associations of residential homeowners, nonresidential property owners, or both;

(3) Lot means any designated parcel of land located within a plat or subdivision to be separately owned, used, developed, or built upon;

(4) Member means an owner that is qualified to be a member of a homeowners association by virtue of ownership of a lot covered by the property described in the declaration and articles of incorporation of a homeowners association dissolved under section 21-19,138;

(5) Municipality means any city or incorporated village of this state;

(6) Owner means the owner of a lot within the plat or subdivision, but does not include a person who has an interest in a lot solely as security for an obligation; and

(7) Real property means the real property described in the articles of incorporation which is located within or to be located within a plat or subdivision approved by a municipality and which is subject to restrictive covenants to be enforced by the homeowners association and filed of record in the office of the register of deeds of the county in which the real property is located.

Source: Laws 2015, LB304, § 2.

18-3103 Municipality; action to be appointed custodian.

In the event a homeowners association is dissolved pursuant to section 21-19,138 and not reinstated pursuant to the Nebraska Nonprofit Corporation Act, any municipality may bring an action to be appointed as custodian to manage the affairs of the homeowners association as set forth in section 18-3104.

Source: Laws 2015, LB304, § 3.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

18-3104 Appointment of municipality as custodian; findings; hearing; powers; compensation; costs; lien; recording; foreclosure; termination of custodianship; withdrawal or termination of custodianship.

(1) The district court of the county in which a dissolved homeowners association was previously existing shall, in a proceeding brought by a municipality by petition to the district court, appoint the municipality as custodian to manage the affairs of the homeowners association upon a finding that:

(a) The homeowners association has been administratively dissolved by the Secretary of State pursuant to section 21-19,138;

(b) The homeowners association has failed in one or more of the following ways:

(i) To maintain the common area as required by the municipality's conditions of approval for the plat or subdivision of real property;

(ii) To maintain the common area or private improvements located outside of the common area on the real property in the plat or subdivision in accordance with all terms and conditions of any agreement with the municipality; or

(iii) To comply with any applicable laws, rules, or regulations pertaining to maintenance of the common area or private improvements located outside of the common area on the real property in the plat or subdivision such that the noncompliance is adverse to the interests of the municipality and may result in expenditures by the municipality not otherwise required;

(c) The municipality has made a demand on the members to hold a special meeting to remove and elect new directors and to approve a submission of an application to the Secretary of State for reinstatement pursuant to the Municipal Custodianship for Dissolved Homeowners Associations Act or the Nebraska Nonprofit Corporation Act; and

(d) The members have failed to reinstate the homeowners association within six months after the demand.

(2) The district court shall hold a hearing, after written notification thereof by the petitioner to all parties to the proceeding and any interested persons designated by the court, before appointing a custodian, and the petitioner shall provide sufficient proof of service to the court. Service by first-class mail shall be deemed sufficient service. The district court appointing the custodian shall have exclusive jurisdiction over the homeowners association and all of its property wherever located.

(3) The district court shall describe the powers and duties of the custodian in its appointing order, which order may be amended upon motion and notice to the parties from time to time. Among other powers, the appointing order shall provide that the custodian may exercise all of the powers of the homeowners association, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the association in the best interests of its members. The custodian shall not be liable for the actions or inactions of the homeowners association and shall maintain all immunities granted to municipalities by applicable law.

(4) Upon application of the custodian, the district court from time to time during the custodianship may order compensation paid and expense disbursements or reimbursements made to the custodian from the assets of the association or proceeds from the sale of the assets. Notice of a hearing to determine compensation and costs shall be provided to all owners and interested parties by the custodian as set forth in subsection (2) of this section, with proof of service provided by the custodian. In the event the district court awards compensation or reimbursement of costs, all such compensation and costs shall be a lien on each and all of the lots in the manner as set forth in subsection (5) of this section. Any court order awarding compensation or reimbursement of costs herein shall identify each lot and the amount of compensation or reimbursement of costs each lot shall be charged as a lien.

(5)(a) A lien created under subsection (4) of this section shall be effective from the time the district court awards the compensation or reimbursement of costs and a notice containing the dollar amount of the lien is recorded in the office where mortgages or deeds of trust are recorded. The lien may be foreclosed in like manner as a mortgage on real estate but the municipality shall give reasonable notice of its action to all other lienholders whose interest would be affected.

(b) A lien created under subsection (4) of this section is prior to all other liens and encumbrances on real estate except (i) liens and encumbrances recorded before the recordation of the declaration or agreement, (ii) a first mortgage or deed of trust on real estate recorded before the notice required under subdivision (5)(a) of this section has been recorded, and (iii) liens for real estate taxes.

(6) In the event the homeowners association is reinstated after appointment of a custodian, any interested party may make a request to the district court for termination of the custodianship.

(7) A custodian may be allowed to withdraw from or terminate the custodianship upon an order from the district court permitting such withdrawal or termination following a hearing for which notice is provided to all owners and interested parties by the custodian.

Source: Laws 2015, LB304, § 4.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

18-3105 Dissolved homeowners association; reinstatement; procedure; fee; Secretary of State; duties; effect of reinstatement.

(1) Notwithstanding any provision to the contrary in the Nebraska Nonprofit Corporation Act or the articles of incorporation or bylaws of a homeowners association, a homeowners association dissolved pursuant to section 21-19,138 may, in addition to any other procedure allowed by law, apply to the Secretary of State for reinstatement in one or more of the following ways:

(a) An application for reinstatement may be brought at any time after dissolution by an officer or director of the dissolved homeowners association pursuant to section 21-19,139; or

(b) Three or more members of such homeowners association may, at any time after dissolution, call a special meeting to (i) remove and elect new directors and (ii) approve the submission of an application to the Secretary of State for reinstatement. Such members may set the time and place of the meeting. Notice of the meeting shall be given pursuant to section 21-1955. For purposes of this section only and notwithstanding the declaration, the articles of incorporation, or the bylaws of a dissolved homeowners association, action on matters described in this subsection shall be approved by the affirmative vote of the voters present and voting on the matter. Three members eligible to vote on the matter shall constitute a quorum.

(2) Upon action being taken to apply for reinstatement as set forth in subdivision (1)(a) or (b) of this section, the process for reinstatement set forth in section 21-19,139 shall apply, except that the reinstatement fee for a homeowners association dissolved more than five years shall be one hundred dollars. Nothing in this subsection shall be construed to abolish, modify, or otherwise change any restrictive covenant or other benefit or obligation of membership in a homeowners association.

(3) The application for reinstatement must:

(a) Recite the name of the homeowners association and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the homeowners association's name satisfies the requirements of section 21-1931.

(4) If the Secretary of State determines that the application contains the information required by subdivisions (1)(a) and (b) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the homeowners association under section 21-1937.

(5) When reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the homeowners association shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 2015, LB304, § 5.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 32

PROPERTY ASSESSED CLEAN ENERGY ACT

Section

- 18-3201. Transferred to section 13-3201.
- 18-3202. Transferred to section 13-3202.
- 18-3203. Transferred to section 13-3203.
- 18-3204. Transferred to section 13-3204.
- 18-3205. Transferred to section 13-3205.
- 18-3206. Transferred to section 13-3206.
- 18-3207. Transferred to section 13-3207.
- 18-3208. Transferred to section 13-3208.
- 18-3209. Transferred to section 13-3209.
- 18-3210. Transferred to section 13-3210.
- 18-3211. Transferred to section 13-3211.

18-3201 Transferred to section 13-3201.

18-3202 Transferred to section 13-3202.

18-3203 Transferred to section 13-3203.

18-3204 Transferred to section 13-3204.

18-3205 Transferred to section 13-3205.

18-3206 Transferred to section 13-3206.

18-3207 Transferred to section 13-3207.

18-3208 Transferred to section 13-3208.

18-3209 Transferred to section 13-3209.

18-3210 Transferred to section 13-3210.

18-3211 Transferred to section 13-3211.

ARTICLE 33

ANNEXATION

Section

- 18-3301. Contiguous land; annexation; plat; approval; recording; effect.
- 18-3302. City or village in two or more counties; annexation; petition of owners; procedure.
- 18-3303. State-owned land; effect of annexation.
- 18-3304. Additions; plat; contents; duty to file.
- 18-3305. Additions; plat; acknowledgment; filing.
- 18-3306. Additions; plat; acknowledgment and recording; effect.

Section

- 18-3307. Additions; streets and alleys.
- 18-3308. Additions; plat; how vacated; approval required.
- 18-3309. Additions; plats; vacation of part; effect.
- 18-3310. Additions; plat; vacation of part; rights of owners.
- 18-3311. Additions; plat; vacation; recording.
- 18-3312. Additions; plat; vacation; right of owner to plat.
- 18-3313. Additions; plat; failure to execute and record; power of county clerk; costs; collection.
- 18-3314. Land less than forty acres; ownership in severalty; county clerk may plat.
- 18-3315. Additions; lots; sale before platting; penalty.

18-3301 Contiguous land; annexation; plat; approval; recording; effect.

(1) Whenever the owner or owners or a majority of the owners of any territory lying contiguous to the corporate limits of any city or village, whether the territory be already in fact subdivided into lots or parcels of ten acres or less or remains unsubdivided, except as provided in section 13-1115, shall desire to annex such territory to any city or village, they shall first cause an accurate plat or map of the territory to be made, showing such territory subdivided into blocks and lots, conforming as nearly as may be to the blocks, lots, and streets of the adjacent city or village. It shall also show the descriptions and numberings, as provided in section 18-3304, for platting additions, and conforming thereto as nearly as may be.

(2) Such plat or map shall be prepared under the supervision of the city engineer in cases of annexation to adjacent cities, under the supervision of the village engineer in cases of annexation to adjacent villages, and under the supervision of a competent surveyor in any case. A copy of such plat or map, certified by such engineer or surveyor, as the case may be, shall be filed in the office of the city clerk or village clerk, together with a request in writing, signed by a majority of the property owners of the territory described in such plat for the annexation of such territory. The city council or village board of trustees shall, at the next regular meeting after the filing of such plat and request for annexation, vote upon the question of such annexation, and such vote shall be recorded in the minutes of such city council or village board of trustees. If a majority of all the members of the city council or village board of trustees vote for such annexation, an ordinance shall be prepared and passed by the city council or village board of trustees declaring the annexation of such territory to the corporate limits of the city or village.

(3) An accurate map or plat of such territory certified by the city engineer, village engineer, or surveyor and acknowledged and proved as provided by law in such cases shall at once be filed and recorded in the office of the county clerk or register of deeds and county assessor of the proper county, together with a certified copy of the ordinance declaring such annexation, under the seal of the city or village. Upon such filing, the annexation of the adjacent territory shall be deemed complete, and the territory included and described in the plat on file in the office of the county clerk or register of deeds shall be deemed and held to be a part of such city or village, and the inhabitants of such territory shall thereafter enjoy the privileges and benefits of such annexation and be subject to the ordinances and regulations of such city or village.

Source: Laws 1879, § 95, p. 229; Laws 1881, c. 23, § 10, p. 188; R.S.1913, § 5086; C.S.1922, § 4253; C.S.1929, § 17-407; R.S.

1943, § 17-405; Laws 1957, c. 51, § 11, p. 243; Laws 1965, c. 64, § 1, p. 281; Laws 1974, LB 757, § 4; R.S.1943, (2012), § 17-405; Laws 2017, LB133, § 312.

18-3302 City or village in two or more counties; annexation; petition of owners; procedure.

Whenever the owner, owners, or a majority of the owners of any territory lying contiguous to the corporate limits of any city or village, the corporate limits of which city or village is situated in two or more counties and, whether the territory shall be situated within or without the counties of which such city or village is a part, except as provided in section 13-1115, shall desire to annex such territory to such city or village, such territory may be annexed in the manner provided in section 18-3301 and when so annexed shall thereafter be a part of such city or village.

Source: Laws 1903, c. 23, § 1, p. 259; R.S.1913, § 5087; C.S.1922, § 4259; C.S.1929, § 17-408; R.S.1943, § 17-406; Laws 1957, c. 51, § 12, p. 245; R.S.1943, (2012), § 17-406; Laws 2017, LB133, § 313.

18-3303 State-owned land; effect of annexation.

The extension of the corporate limits of any city or village beyond or around any lands belonging to the State of Nebraska shall not affect the status of such state land.

Source: Laws 1917, c. 101, § 2, p. 267; C.S.1922, § 4261; C.S.1929, § 17-410; R.S.1943, § 17-412; R.S.1943, (2012), § 17-412; Laws 2017, LB133, § 314.

18-3304 Additions; plat; contents; duty to file.

Every original owner of any tract or parcel of land, who shall subdivide such tract or parcel into two or more parts for the purpose of laying out any city or village or an addition to any city or village, or suburban lots, shall cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all subdivisions of such tract or parcel of land, numbering such tract or parcel by progressive numbers, and giving the dimensions and length and breadth of such tract or parcel, and the breadth and courses of all streets and alleys established therein. Descriptions of lots or parcels of land in such subdivisions, according to the number and designation on such plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all purposes. The duty to file for record a plat as provided in sections 18-3304 to 18-3315 shall attach as a covenant of warranty in all conveyances made of any part or parcel of such subdivision by the original owners against any and all assessments, costs, and damages paid, lost, or incurred by any grantee in consequence of the omission on the part of the owner filing such plat.

Source: Laws 1879, § 104, p. 233; R.S.1913, § 5092; C.S.1922, § 4265; C.S.1929, § 17-414; R.S.1943, § 17-415; Laws 1967, c. 75, § 3, p. 243; R.S.1943, (2012), § 17-415; Laws 2017, LB133, § 315.

18-3305 Additions; plat; acknowledgment; filing.

Every plat created pursuant to section 18-3304 shall contain a statement to the effect that the subdivision of (here insert a correct description of the land or parcel subdivided), as appears on this plat, is made with the free consent and in accordance with the desire of the undersigned owners and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds. When thus executed and acknowledged, the plat shall be filed for record and recorded in the office of the register of deeds and county assessor of the proper county.

Source: Laws 1879, § 105, p. 234; R.S.1913, § 5093; C.S.1922, § 4266; C.S.1929, § 17-415; R.S.1943, § 17-416; Laws 1974, LB 757, § 5; R.S.1943, (2012), § 17-416; Laws 2017, LB133, § 316.

18-3306 Additions; plat; acknowledgment and recording; effect.

The acknowledgment and recording of a plat created pursuant to section 18-3304 is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use or as is on such plat dedicated to charitable, religious, or educational purposes.

Source: Laws 1879, § 106, p. 234; R.S.1913, § 5094; C.S.1922, § 4267; C.S.1929, § 17-416; R.S.1943, § 17-417; R.S.1943, (2012), § 17-417; Laws 2017, LB133, § 317.

18-3307 Additions; streets and alleys.

Streets and alleys laid out in any addition to any city or village shall be continuous with and correspond in direction and width to the streets and alleys of the city or village to which they are in addition.

Source: Laws 1879, § 107, p. 234; R.S.1913, § 5095; C.S.1922, § 4268; C.S.1929, § 17-417; R.S.1943, § 17-418; R.S.1943, (2012), § 17-418; Laws 2017, LB133, § 318.

18-3308 Additions; plat; how vacated; approval required.

Any plat created pursuant to section 18-3304 may be vacated at any time before the sale of any lots contained in such plat by a written instrument declaring such plat to be vacated. Such written instrument shall be approved by the city council or village board of trustees and shall be duly executed, acknowledged, or proved, and recorded in the same office with the plat to be vacated. The execution and recording of such written instrument shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in such plat. In cases when any lots have been sold, the plat may be vacated, as provided in this section, by all the owners of lots in such plat joining in the execution of such written instrument.

Source: Laws 1879, § 108, p. 234; R.S.1913, § 5096; C.S.1922, § 4269; C.S.1929, § 17-418; R.S.1943, § 17-419; Laws 1985, LB 51, § 1; R.S.1943, (2012), § 17-419; Laws 2017, LB133, § 319.

18-3309 Additions; plats; vacation of part; effect.

Any part of a plat may be vacated under section 18-3308. Such vacating does not abridge or destroy any of the rights and privileges of other property owners

in such plat. Nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law.

Source: Laws 1879, § 109, p. 235; R.S.1913, § 5097; C.S.1922, § 4270; C.S.1929, § 17-419; R.S.1943, § 17-420; R.S.1943, (2012), § 17-420; Laws 2017, LB133, § 320.

18-3310 Additions; plat; vacation of part; rights of owners.

When any part of a plat shall be vacated as provided in section 18-3308, the owners of the lots so vacated may enclose the streets, alleys, and public grounds adjoining such lots in equal proportions.

Source: Laws 1879, § 110, p. 235; R.S.1913, § 5098; C.S.1922, § 4271; C.S.1929, § 17-420; R.S.1943, § 17-421; R.S.1943, (2012), § 17-421; Laws 2017, LB133, § 321.

18-3311 Additions; plat; vacation; recording.

The county clerk in whose office any vacated plats are recorded shall write in plain, legible letters across that part of such plat so vacated the word, vacated, and also make a reference on the plat to the volume and page in which such instrument of vacation is recorded.

Source: Laws 1879, § 111, p. 235; R.S.1913, § 5099; C.S.1922, § 4272; C.S.1929, § 17-421; R.S.1943, § 17-422; R.S.1943, (2012), § 17-422; Laws 2017, LB133, § 322.

18-3312 Additions; plat; vacation; right of owner to plat.

The owner of any lots in a plat vacated under section 18-3308 may cause such lots and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor. When such plat is acknowledged by such owner and is recorded in the record office of the county, such lots may be conveyed and assessed by the numbers given them on such plat.

Source: Laws 1879, § 112, p. 235; R.S.1913, § 5100; C.S.1922, § 4273; C.S.1929, § 17-422; R.S.1943, § 17-423; R.S.1943, (2012), § 17-423; Laws 2017, LB133, § 323.

18-3313 Additions; plat; failure to execute and record; power of county clerk; costs; collection.

Whenever the original owners of any subdivision of land as provided in sections 18-3304 and 18-3305 have sold or conveyed any part of such subdivision or invested the public with any rights in such subdivision and have failed and neglected to execute and file for record a plat as provided in sections 18-3304 and 18-3305, the county clerk shall notify such owners by certified mail and demand an execution of such plat as required by law. If such owners fail and neglect to execute and file for record such plat for thirty days following the issuance of such notice, the county clerk shall cause the plat of such subdivision to be made, along with any necessary surveying. Such plat shall be signed and acknowledged by the county clerk, who shall certify that he or she executed it by reason of the failure of the owners required to do so, and filed for record. When so filed for record, it shall have the same effect for all purposes as if executed, acknowledged, and recorded by the owners themselves. A correct statement of the costs and expenses of such plat, surveying, and

recording, verified by oath, shall be submitted by the county clerk to the county board, who shall allow such costs and expenses to be paid out of the county treasury and shall assess such amount, pro rata, upon all subdivisions of such tract, lot, or parcel so subdivided. Such assessment shall be collected with and in like manner as the general taxes and shall go to the county general fund. The county board may also direct suit to be brought in the name of the county, before any court having jurisdiction, to recover from the original owners the cost and expense of procuring and recording such plat.

Source: Laws 1879, § 113, p. 235; R.S.1913, § 5101; C.S.1922, § 4274; C.S.1929, § 17-423; R.S.1943, § 17-424; R.S.1943, (2012), § 17-424; Laws 2017, LB133, § 324.

18-3314 Land less than forty acres; ownership in severalty; county clerk may plat.

Whenever any subdivision of land of forty acres or less or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels cannot, in the judgment of the county clerk, be made sufficiently certain and accurate for the purpose of assessment and taxation without noting the metes and bounds of such parts or parcels, the county clerk shall require and cause to be made and recorded a plat of such tract or lot of land with its several subdivisions, in accordance with section 18-3304. The county clerk shall proceed in such cases according to section 18-3313, and all the provisions of law in relation to the plats of cities and villages shall govern any tracts and parcels of land platted pursuant to this section.

Source: Laws 1879, § 114, p. 236; R.S.1913, § 5102; C.S.1922, § 4275; C.S.1929, § 17-424; R.S.1943, § 17-425; R.S.1943, (2012), § 17-425; Laws 2017, LB133, § 325.

18-3315 Additions; lots; sale before platting; penalty.

Any person who sells or offers for sale or lease any lots in any municipality or addition to any municipality, before the plat of such lots has been duly acknowledged and recorded as provided in section 18-3305, shall pay a penalty of fifty dollars for each lot or part of lot sold, leased, or offered for sale.

Source: Laws 1879, § 116, p. 237; R.S.1913, § 5104; C.S.1922, § 4277; C.S.1929, § 17-426; R.S.1943, § 17-426; R.S.1943, (2012), § 17-426; Laws 2017, LB133, § 326.

CHAPTER 19

CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

Article.

1. Municipal Development Funds. (Applicable to cities of the metropolitan or primary class.) 19-102, 19-103.
4. Commission Form of Government. (Applicable to cities of 2,000 population or over.) 19-401 to 19-418.
5. Charter Convention. (Applicable to cities over 5,000 population.) 19-501.
6. City Manager Plan. (Applicable to cities of 1,000 population or more and less than 200,000.)
 - (a) General Provisions. 19-602.
9. City Planning, Zoning. (Applicable to cities of the first or second class and villages.) 19-922, 19-926.
11. Treasurer's Report and Council Proceedings; Publication. 19-1101, 19-1102.
18. Civil Service Act. 19-1827.
24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2402 to 19-2427.
35. Pension Plans. (Applicable to cities of the first or second class and villages.) 19-3501.
40. Business Improvement Districts. (Applicable to all cities.) 19-4015 to 19-4038.
51. Investment of Public Endowment Funds. (Applicable to cities of more than 5,000 population.) 19-5101.
52. Nebraska Municipal Land Bank Act. 19-5201 to 19-5218.
53. Riverfront Development District Act. 19-5301 to 19-5317.
54. Vacant Property Registration Act. 19-5401 to 19-5408.

ARTICLE 1

MUNICIPAL DEVELOPMENT FUNDS (Applicable to cities of the metropolitan or primary class.)

Section

- 19-102. City of the Primary Class Development Fund; created; use; investment.
 19-103. City of the Metropolitan Class Development Fund; created; use; investment.

19-102 City of the Primary Class Development Fund; created; use; investment.

There is hereby created the City of the Primary Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the Antelope Valley project and financing costs related thereto for the Antelope Valley Study as outlined in the Environmental Impact Statement and Comprehensive Plan Amendment 94-60 to the 1994 Lincoln/Lancaster County Comprehensive Plan. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

No distribution from the fund shall be made unless the city of the primary class provides matching funds equal to the ratio of one dollar for each three

dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

The State Treasurer shall transfer the unobligated balance in the City of the Primary Class Development Fund to the General Fund on July 1, 2017, or as soon thereafter as administratively possible, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. On July 8, 2017, the City of the Primary Class Development Fund shall terminate.

Source: Laws 2001, LB 657, § 2; Laws 2017, LB331, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

19-103 City of the Metropolitan Class Development Fund; created; use; investment.

There is hereby created the City of the Metropolitan Class Development Fund. Amounts credited to the fund pursuant to section 77-2602 shall, upon appropriation by the Legislature, be first expended to support the design and development of the redevelopment projects within the riverfront redevelopment plan designated for the area along the Missouri River generally north of Interstate 480 to Interstate 680 by the city of Omaha, except that each fiscal year there shall be no distribution from the fund until the finance director of the city certifies that other funds have been encumbered for that calendar year by the city to pay the cost of the combined sewer separation program project east of Seventy-second Street in the city of Omaha. Such certification shall be required only until such sewer separation project is completed or until no cigarette tax money is available to the fund. The amount certified shall be at least seven million dollars each calendar year until 2007 and at least four million dollars each calendar year thereafter. The sewer separation project has such a significant impact on the health and welfare of such a large percentage of the population and on public health in general that the project is a matter of statewide concern. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

No distribution from the fund shall be made unless the city of the metropolitan class provides matching funds equal to the ratio of one dollar for each three dollars of the state distribution. Funds derived from any state source may not be utilized as matching funds for purposes of this section.

The State Treasurer shall transfer the unobligated balance in the City of the Metropolitan Class Development Fund to the General Fund on July 1, 2017, or as soon thereafter as administratively possible, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. On July 8, 2017, the City of the Metropolitan Class Development Fund shall terminate.

Source: Laws 2001, LB 657, § 3; Laws 2017, LB331, § 20.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 4

COMMISSION FORM OF GOVERNMENT
(Applicable to cities of 2,000 population or over.)

Section

- 19-401. Commission plan; population requirement.
- 19-414. Council; departments; assignment of duties.
- 19-415. Mayor; council members; powers and duties; heads of departments.
- 19-418. City council; meetings; quorum.

19-401 Commission plan; population requirement.

Any city in this state having not less than two thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census may adopt the commission form of government and be governed thereunder by proceeding as provided in sections 19-401 to 19-433.

Source: Laws 1911, c. 24, § 1, p. 150; R.S.1913, § 5288; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4511; Laws 1923, c. 141, § 1, p. 344; C.S.1929, § 19-401; R.S.1943, § 19-401; Laws 2017, LB113, § 23.

19-414 Council; departments; assignment of duties.

The executive and administrative powers, authorities, and duties in cities adopting the commission plan of government shall be distributed into and among departments as follows:

In cities of the metropolitan class, (1) department of public affairs, (2) department of accounts and finances, (3) department of police, sanitation, and public safety, (4) department of fire protection and water supply, (5) department of street cleaning and maintenance, (6) department of public improvements, and (7) department of parks and public property;

In cities of the primary class, (1) department of public affairs, (2) department of accounts and finances, (3) department of public safety, (4) department of streets and public improvements, and (5) department of parks and public property; and

In cities containing two thousand or more and not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, (1) department of public affairs and public safety, (2) department of accounts and finances, (3) department of streets, public improvements, and public property, (4) department of public works, and (5) department of parks and recreation.

The city council shall provide, as nearly as possible, the powers and duties to be exercised and performed by, and assign them to, the appropriate departments. The city council may prescribe the powers and duties of all officers and employees of the city and may assign particular officers, or employees, to more than one of the departments, may require any officer or employee to perform duties in two or more of the departments, and may make such other rules and regulations as may be necessary or proper for the efficient and economical management of the business affairs of the city.

Source: Laws 1911, c. 24, § 11, p. 159; Laws 1913, c. 21, § 7, p. 92; R.S.1913, § 5298; C.S.1922, § 4521; Laws 1923, c. 141, § 7, p. 351; C.S.1929, § 19-411; R.S.1943, § 19-414; Laws 1955, c. 55, § 3, p. 179; Laws 1979, LB 281, § 3; Laws 2017, LB113, § 24.

19-415 Mayor; council members; powers and duties; heads of departments.

In cities of the metropolitan class, the city council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of police, sanitation, and public safety, one council member to be superintendent of the department of fire protection and water supply, one council member to be superintendent of the department of street cleaning and maintenance, one council member to be superintendent of the department of public improvements, and one council member to be superintendent of parks and public property.

In cities containing at least forty thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council shall consist of the mayor who shall be superintendent of the department of public affairs, one council member to be superintendent of the department of accounts and finances, one council member to be superintendent of the department of public safety, one council member to be superintendent of the department of streets and public improvements, and one council member to be superintendent of the department of parks and public property.

In cities containing at least two thousand and less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council shall consist of the mayor who shall be commissioner of the department of public affairs and public safety, one council member to be commissioner of the department of streets, public improvements and public property, one council member to be commissioner of the department of public accounts and finances, one council member to be commissioner of the department of public works, and one council member to be commissioner of the department of parks and recreation.

In all of such cities the commissioner of the department of accounts and finances shall be vice president of the city council and shall, in the absence or inability of the mayor to serve, perform the duties of the mayor. In case of vacancy in the office of mayor by death or otherwise, the vacancy shall be filled as provided in section 32-568.

Source: Laws 1911, c. 24, § 12, p. 160; R.S.1913, § 5299; C.S.1922, § 4522; Laws 1923, c. 141, § 8, p. 352; C.S.1929, § 19-412; R.S.1943, § 19-415; Laws 1963, c. 89, § 1, p. 299; Laws 1969, c. 112, § 6, p. 523; Laws 1979, LB 80, § 45; Laws 1979, LB 281, § 4; Laws 1994, LB 76, § 514; Laws 2017, LB113, § 25.

19-418 City council; meetings; quorum.

The regular meetings of the city council in cities of the metropolitan class shall be held at least once in each week and upon such day and hour as the city council may designate. In all other cities having a population of two thousand or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the regular meetings of the city council shall be held at such intervals and upon such day and hour as the city council may by ordinance or resolution designate; and special meetings of the city council in any of such cities may be called,

from time to time, by the mayor or two council members, giving notice in such manner as may be fixed or defined by law or ordinance in any of such cities or as shall be fixed by ordinance or resolution by such city council. A majority of such city council shall constitute a quorum for the transaction of any business, but it shall require a majority vote of the city council in any such city to pass any measure or transact any business.

Source: Laws 1911, c. 24, § 15, p. 163; R.S.1913, § 5302; C.S.1922, § 4525; C.S.1929, § 19-415; R.S.1943, § 19-418; Laws 1969, c. 257, § 18, p. 941; Laws 1979, LB 80, § 46; Laws 2017, LB113, § 26.

ARTICLE 5
CHARTER CONVENTION
(Applicable to cities over 5,000 population.)

Section

19-501. Charter convention; charter; amendments; election.

19-501 Charter convention; charter; amendments; election.

Whenever, in any city having a population of more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, a charter convention shall have prepared and proposed any charter for the government of such city or any amendments to the charter previously in force, it shall be the duty of the city clerk to also publish and submit, at the same time and in the same manner as in the case of the submission of such proposed charter, any additional or alternative articles or sections, to the qualified voters of such city for their approval, which shall be proposed by the petition of at least ten percent of the qualified electors of such city voting for the gubernatorial candidates at the next preceding general election. The petition must be filed within thirty days after the work of such charter convention shall have been completed.

Source: Laws 1913, c. 192, § 1, p. 569; R.S.1913, § 5312; C.S.1922, § 4535; C.S.1929, § 19-501; R.S.1943, § 19-501; Laws 2017, LB113, § 27.

ARTICLE 6
CITY MANAGER PLAN
(Applicable to cities of 1,000 population or more and less than 200,000.)

(a) GENERAL PROVISIONS

Section

19-602. Population; how determined.

(a) GENERAL PROVISIONS

19-602 Population; how determined.

For the purposes of sections 19-601 to 19-648, the population of a city shall be the number of inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

Source: Laws 1917, c. 208, § 2, p. 498; C.S.1922, § 4539; C.S.1929, § 19-602; R.S.1943, § 19-602; Laws 2017, LB113, § 28.

ARTICLE 9

CITY PLANNING, ZONING

(Applicable to cities of the first or second class and villages.)

Section

19-922. Standard codes; applicability.

19-926. Planning commission; members; term; removal; vacancies; alternate members.

19-922 Standard codes; applicability.

Any code adopted and approved by a city or village as provided in section 18-132 and the building permit requirements or occupancy permit requirements imposed by any such code or by section 19-913 shall apply to all of the city or village and within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Source: Laws 1975, LB 410, § 8; Laws 1986, LB 960, § 12; Laws 1987, LB 483, § 1; Laws 2014, LB802, § 1; Laws 2016, LB704, § 210.

19-926 Planning commission; members; term; removal; vacancies; alternate members.

(1) The planning commission shall consist of nine regular members who shall represent, insofar as is possible, the different professions or occupations in the municipality and shall be appointed by the mayor, by and with the approval of a majority vote of the members elected to the council or the village board. Two of the regular members may be residents of the area over which the municipality is authorized to exercise extraterritorial zoning and subdivision regulation. When there is a sufficient number of residents in the area over which the municipality exercises extraterritorial zoning and subdivision regulation, one regular member of the commission shall be a resident from such area. If it is determined by the city council or village board that a sufficient number of residents reside in the area subject to extraterritorial zoning or subdivision regulation, and no such resident is a regular member of the commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean: (a) For a village, two hundred residents; (b) for a city of the second class, five hundred residents; and (c) for a city of the first class, one thousand residents. A number of commissioners equal to a majority of the number of regular members appointed to the commission shall constitute a quorum for the transaction of any business. All regular members of the commission shall serve without compensation. The term of each regular member shall be three years, except that three regular members of the first commission to be so appointed shall serve for terms of one year, three for terms of two years, and three for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the council or village board, be removed by the mayor with the consent of a majority vote of the members elected to the council or village board for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by the mayor.

(2) Notwithstanding the provisions of subsection (1) of this section, the planning commission for any city of the second class or village may have either five, seven, or nine regular members as the city council or village board of

TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATIONS 19-1101

trustees establishes by ordinance. If a city or village planning commission has either five or seven regular members, approximately one-third of the regular members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years.

(3) A city of the first or second class or a village may, by ordinance, provide for the appointment of one alternate member to the planning commission who shall be chosen by the mayor with the approval of a majority vote of the elected members of the council or village board. The alternate member shall serve without compensation. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the mayor with the approval of a majority vote of the elected members of the council or village board. The alternate member may attend any meeting and may serve as a voting and participating member of the commission at any time when less than the full number of regular commission members is present and capable of voting.

(4) A regular or alternate member of the planning commission may hold any other municipal office except (a) mayor, (b) a member of the city council or village board of trustees, (c) a member of any community redevelopment authority or limited community redevelopment authority created under section 18-2102.01, or (d) a member of any citizen advisory review committee created under section 18-2715.

Source: Laws 1937, c. 39, § 3, p. 176; C.S.Supp.,1941, § 18-2103; R.S. 1943, § 18-1303; Laws 1975, LB 410, § 9; Laws 1978, LB 186, § 3; R.S.1943, (1983), § 18-1303; Laws 1988, LB 934, § 6; Laws 1995, LB 193, § 1; Laws 2017, LB383, § 3.

ARTICLE 11

TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATION

Section

19-1101. City or village treasurer; report for fiscal year; publication.

19-1102. City or village clerk; proceedings of council; publication; contents.

19-1101 City or village treasurer; report for fiscal year; publication.

The treasurer of each city or village that has a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall prepare and publish annually within sixty days after the close of its municipal fiscal year a statement of the receipts and expenditures of funds of the city or village for the preceding fiscal year. The statement shall also include the information required by subsection (3) of section 16-318 or subsection (2) of section 17-606. Not more than the legal rate provided for in section 33-141 shall be charged and paid for such publication.

Source: Laws 1919, c. 183, § 2, p. 410; C.S.1922, § 4377; C.S.1929, § 17-575; R.S.1943, § 19-1101; Laws 1959, c. 66, § 1, p. 292; Laws 1992, LB 415, § 2; Laws 2013, LB112, § 5; Laws 2017, LB113, § 29.

Cross References

City of the first class, receipts and expenditures, publication requirements, see section 16-722.

19-1102 City or village clerk; proceedings of council; publication; contents.

It shall be the duty of each village or city clerk in every village or city having a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to prepare and publish the official proceedings of the village or city board, council, or commission within thirty days after any meeting of the board, council, or commission. The publication shall be in a newspaper in or of general circulation in the village or city, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

Source: Laws 1919, c. 183, § 1, p. 410; C.S.1922, § 4376; C.S.1929, § 17-574; R.S.1943, § 19-1102; Laws 1975, LB 193, § 1; Laws 1992, LB 415, § 3; Laws 2017, LB113, § 30.

ARTICLE 18

CIVIL SERVICE ACT

Section

19-1827. Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.

19-1827 Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.

(1) There is hereby created, in cities in the State of Nebraska having a population of more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and having full-time police officers or full-time firefighters, a civil service commission, except in cities with a population in excess of forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census which have or may adopt a home rule charter pursuant to sections 2 to 5 of Article XI of the Constitution of this state. Any city or village having a population of five thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census may adopt the Civil Service Act and create a civil service commission by a vote of the electors of such city or village. If any city of the first class which established a civil service commission decreases in population to less than five thousand, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, and continues to have full-time police officers or full-time firefighters, the civil service commission shall

be continued for at least four years, and thereafter continued at the option of the governing body of such city or village. The members of such commission shall be appointed by the appointing authority.

(2) The governing body shall by ordinance determine if the commission shall be comprised of three or five members. The members of the civil service commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such municipality for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides. If the commission is comprised of three members, the term of office of such commissioners shall be six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. If the commission is comprised of five members, the term of office of such members shall be for five years, except that the first members of such commission shall be appointed for different terms, as follows: One to serve for a period of one year, one to serve for a period of two years, one to serve for a period of three years, one to serve for a period of four years, and one to serve for a period of five years. If the municipality determines by ordinance to change from a three-member commission to a five-member commission, or from a five-member commission to a three-member commission, the members of the commission serving before the effective date of such ordinance shall hold office until reappointed or their successors are appointed.

(3) Any member of the civil service commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except that no member of the commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the appointing authority. Any member so removed shall have the right to appeal to the district court of the county in which such commission is located, which court shall hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.

(4) The members of the civil service commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Civil Service Act. Two commissioners in a three-member commission and three commissioners in a five-member commission shall constitute a quorum for the transaction of business. Confirmation of the appointment or appointments of commissioners, made under subsection (1) of this section, by any other legislative body shall not be required. At the time of any appointment, not more than two commissioners of a three-member commission, or three commissioners of a five-member commission, including the one or ones to be appointed, shall be registered electors of the same political party.

Source: Laws 1943, c. 29, § 1, p. 125; R.S.1943, § 19-1801; Laws 1957, c. 48, § 1, p. 228; Laws 1963, c. 89, § 5, p. 304; Laws 1983, LB 291, § 1; R.S.1943, (1983), § 19-1801; Laws 1985, LB 372, § 6; Laws 2017, LB113, § 31.

ARTICLE 24

MUNICIPAL IMPROVEMENTS

(Applicable to cities of the first or second class and villages.)

Section

- 19-2402. Water service; sanitary sewer service; extension districts; ordinance; contents.
19-2404. Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.
19-2407. Water service; sanitary sewer service; extension districts; special assessments; levy; collection.
19-2418. Sidewalks; construct, replace, repair; districts; special assessments; payment.
19-2427. Improvement district; adjacent land; how treated; special assessments.

19-2402 Water service; sanitary sewer service; extension districts; ordinance; contents.

(1) Whenever the city council of any city of the first or second class or the board of trustees of a village deems it necessary and advisable to extend municipal water service or municipal sanitary sewer service to territory beyond the existing systems, such municipal officials may, by ordinance, create a district or districts to be known as sanitary sewer extension districts or water extension districts for such purposes, and such district or districts may include properties within the corporate limits of the municipality and the extraterritorial zoning jurisdiction as established pursuant to section 16-901 or 17-1002.

(2) The owners of lots and lands abutting upon a street, avenue, or alley, or part thereof, may petition the council or board to create a sanitary sewer extension district or a water extension district. The petition shall be signed by owners representing at least two-thirds of the front footage abutting upon the street, avenue, or alley, or part thereof, within the proposed district, which will become subject to an assessment for the cost of the improvement.

(3) If creation of the district is not initiated by petition, a vote of at least three-fourths of all the members of the council or board shall be required to adopt the ordinance creating the district.

(4) Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the location and terminal points thereof. Such ordinance shall also refer to the plans and specifications for such utility extensions which shall have been made and filed with the municipal clerk by the municipal engineer prior to the introduction of the ordinance, and the city or village engineer at the time of filing such plans and specifications shall make and file an estimate of the total cost of the proposed utility extension. The ordinance shall also state the outer boundaries of the district or districts in which it is proposed to make special assessments.

(5) Upon creation of an extension district, whether by vote of the governing body or by petition, the council or board shall order the sewer extension main or water extension main laid and, to the extent of special benefit, assess the cost thereof against the property which abuts upon the street, avenue, or alley, or part thereof, which is located in the district.

Source: Laws 1961, c. 63, § 1, p. 247; Laws 2001, LB 222, § 3; Laws 2002, LB 649, § 1; Laws 2016, LB704, § 211.

19-2404 Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.

(1) Except as provided in subsection (2) of this section, special assessments for sanitary sewer extension mains or water extension mains in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 19-2405. The first installment becomes delinquent fifty days after the making of such levy. Subsequent installments become delinquent on the anniversary date of the levy. Each installment, except the first, shall draw interest at the rate set by the city council or board of trustees from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special assessments shall be collected and enforced as in the case of general municipal taxes and shall be a lien on such real estate from and after the date of the levy. If three or more of such installments become delinquent and unpaid on the same property, the city council or the board of trustees may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time in a legal newspaper of general circulation published in the municipality or, if none is published in such municipality, in a legal newspaper of general circulation in the municipality. After the fixed date such future installments shall be deemed to be delinquent and the municipality may proceed to enforce and collect the total amount due including all future installments.

(2) If the city or village incurs no new indebtedness pursuant to section 19-2405 for any water service extension or sanitary sewer extension in a district, the special assessments for such improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council or board of trustees determines at the time of making the levy to be reasonable and fair.

Source: Laws 1961, c. 63, § 3, p. 249; Laws 1969, c. 51, § 76, p. 322; Laws 1980, LB 655, § 1; Laws 1980, LB 933, § 23; Laws 1981, LB 167, § 24; Laws 1986, LB 960, § 16; Laws 2005, LB 161, § 9; Laws 2015, LB361, § 43.

19-2407 Water service; sanitary sewer service; extension districts; special assessments; levy; collection.

Special assessments may be levied by the mayor and city council or chairperson and board of trustees, as the case may be, for the purpose of paying the cost of constructing extension water mains or sanitary service connections, as provided in sections 19-2402 to 19-2407. Such assessments shall be levied on the real property lying and being within the utility main district in which such extension mains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the mayor and council, or chairperson and board of trustees, as the case may be, sitting as a board of equalization after notice to property owners, as

provided in other cases of special assessment. After the mayor and council, or chairperson and board of trustees, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be made according to the front footage of the lots or real estate within such utility district, or according to such other rule as the board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All such special assessments shall be collected in the same manner as general municipal taxes and shall be subject to the same penalty.

Source: Laws 1961, c. 63, § 6, p. 250; Laws 2015, LB361, § 44.

19-2418 Sidewalks; construct, replace, repair; districts; special assessments; payment.

The mayor and city council or board of trustees shall levy special assessments on the lots and parcels of land abutting on or adjacent to the sidewalk improvements specially benefited thereby in such district in proportion to the benefits, to pay the cost of such improvement. All special assessments shall be a lien on the property on which levied from the date of the levy until paid. The special assessment for the sidewalk improvement shall be levied at one time and shall become delinquent as follows: One-seventh of the total assessment shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at the rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. All such special assessments shall be made and collected in accordance with the procedure established for paving assessments for the particular city or village.

Source: Laws 1965, c. 80, § 2, p. 316; Laws 1980, LB 933, § 24; Laws 1981, LB 167, § 25; Laws 2015, LB361, § 45.

19-2427 Improvement district; adjacent land; how treated; special assessments.

Any city of the first or second class or village may include land adjacent to such city or village when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The city council or board of trustees may levy a special assessment for the costs of such improvements upon the properties found specially benefited thereby, except as provided in sections 19-2428 to 19-2431.

Source: Laws 1979, LB 136, § 4; Laws 1983, LB 94, § 4; Laws 1987, LB 679, § 1; Laws 2015, LB361, § 46.

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 or village. 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 or village 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) Beginning December 31, 1998, through December 31, 2017:

(a) 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; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the city council or village board shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the city council or village board does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city or village. All costs of the audit shall be paid by the city or village. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(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 most recent federal decennial census or the most recent revised certified count by the United States Bureau of the 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; Laws 2014, LB759, § 14; Laws 2017, LB113, § 32; Laws 2017, LB415, § 9.

ARTICLE 40

BUSINESS IMPROVEMENT DISTRICTS

(Applicable to all cities.)

Section	
19-4015.	Act, how cited.
19-4016.	Act, how construed.
19-4017.	Act; purpose.
19-4017.01.	Terms, defined.
19-4018.	Cities; business improvement district; special assessment; business occupation tax; exceptions; use of proceeds.
19-4020.	Business improvement district; created; location.
19-4021.	Business improvement board; membership; powers; duties.
19-4024.	Repealed. Laws 2015, LB 168, § 21.
19-4025.	Transferred to section 19-4029.01.
19-4026.	Hearing to create a district; call by petition.

- Section
- 19-4027. Hearing to create district; city council; duties; protest; effect.
- 19-4028. Proposed district; boundary amendment; hearing continued; procedure.
- 19-4029. City council; ordinance to establish district; when; contents; taxation; basis.
- 19-4029.01. Notice of hearing; manner given; contents; notice to neighborhood association.
- 19-4029.02. Expansion of boundaries; procedure; ordinance; hearing.
- 19-4029.03. Hearing for expansion of boundaries; call by petition.
- 19-4029.04. Hearing for expansion of boundaries; city council; duties; protest; effect.
- 19-4029.05. Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.
- 19-4030. Business improvement district; special assessment; purpose; notice; appeal; lien; area within riverfront development district; how treated.
- 19-4031. District; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis; area within riverfront development district; how treated.
- 19-4033. Assessments or taxes; limitations; effect.
- 19-4034. Business improvement district; special assessment or business occupation tax; exceptions; maintenance, repair, or reconstruction; levy; procedure.
- 19-4037. Funds and grants; use.
- 19-4038. Districts created prior to May 23, 1979; governed by act.

19-4015 Act, how cited.

Sections 19-4015 to 19-4038 shall be known and may be cited as the Business Improvement District Act.

Source: Laws 1979, LB 251, § 1; Laws 2015, LB168, § 1.

19-4016 Act, how construed.

The Business Improvement District Act provides a separate and additional method, authority, and procedure for the matters to which it relates and does not affect any other law relating to the same or similar subject. When proceeding under the act, only the provisions of the act need be followed.

Source: Laws 1979, LB 251, § 2; Laws 2015, LB168, § 2.

19-4017 Act; purpose.

Cities of the metropolitan, primary, first, and second class in the state at present have business areas in need of improvement and development, but lack the funds with which to provide and maintain such improvements. The purpose of the Business Improvement District Act is to provide a means by which such cities may raise the necessary funds to be used for the purpose of providing and maintaining the improvements authorized by the act.

Source: Laws 1979, LB 251, § 3; Laws 2015, LB168, § 3.

19-4017.01 Terms, defined.

For purposes of the Business Improvement District Act:

(1) Record owner shall mean the fee owner of real property as shown in the records of the register of deeds office in the county in which the business area is located. A contract purchaser of real property shall be considered the record owner and the only person entitled to petition pursuant to section 19-4026 or 19-4029.03 or protest pursuant to section 19-4027 or 19-4029.04, if the contract

is recorded in the register of deeds office in the county in which the business area is located;

(2) Assessable unit shall mean front foot, square foot, equivalent front foot, or other unit of assessment established under the proposed method of assessment set forth in the ordinance creating a business improvement district;

(3) Space shall mean the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for use in connection with a business or profession of a user, excepting all space owned or used by political subdivisions; and

(4) Business area shall mean an established area of the city zoned for business, public, or commercial purposes.

Source: Laws 1983, LB 22, § 1; Laws 2015, LB168, § 4.

19-4018 Cities; business improvement district; special assessment; business occupation tax; exceptions; use of proceeds.

Pursuant to the Business Improvement District Act, cities of the metropolitan, primary, first, or second class may impose (1) a special assessment upon the property within a business improvement district in the city or (2) a general business occupation tax on businesses and users of space within a business improvement district. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The proceeds or other available funds may be used for the purposes stated in section 19-4019.

Source: Laws 1979, LB 251, § 4; Laws 2014, LB474, § 8.

19-4020 Business improvement district; created; location.

A business improvement district may be created as provided by the Business Improvement District Act and shall be within the boundaries of a business area.

Source: Laws 1979, LB 251, § 6; Laws 1983, LB 22, § 2; Laws 2015, LB168, § 5.

19-4021 Business improvement board; membership; powers; duties.

The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the board. The board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under the Business Improvement District Act, more than one business improvement district as part of the same plan for improvements for that business area may be proposed. The board may make recommendations to the city as to the use of any occupation tax funds collected, and may administer such funds if so directed by the mayor and city council. The board shall also

review and make recommendations to the city regarding expansion of the boundaries of the business improvement district under sections 19-4029.02 to 19-4029.05.

Source: Laws 1979, LB 251, § 7; Laws 1983, LB 22, § 3; Laws 2015, LB168, § 6.

19-4024 Repealed. Laws 2015, LB 168, § 21.

19-4025 Transferred to section 19-4029.01.

19-4026 Hearing to create a district; call by petition.

In the event that the city council has not acted to call a hearing to create a district as provided in section 19-4029, it shall do so when presented with a petition signed by the record owners of thirty percent of the assessable front footage in a business area or by the users of thirty percent of space in a business area.

Source: Laws 1979, LB 251, § 12; Laws 1983, LB 22, § 6; Laws 2015, LB168, § 8.

19-4027 Hearing to create district; city council; duties; protest; effect.

Whenever a hearing is held under section 19-4029, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the proposed district. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of the space in the proposed district.

Source: Laws 1979, LB 251, § 13; Laws 1983, LB 22, § 7; Laws 2015, LB168, § 9.

19-4028 Proposed district; boundary amendment; hearing continued; procedure.

If the city council decides to change the boundaries of the proposed district or to change the proposed modifications to the boundaries of an existing business improvement district or districts from those recommended by the business improvement board, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 19-4029.01, showing the boundary amendments. The city council may not expand the proposed boundaries recommended by the business improvement board without the council's proposed boundaries being considered by the business improvement board.

Source: Laws 1979, LB 251, § 14; Laws 1983, LB 22, § 8; Laws 2015, LB168, § 10.

19-4029 City council; ordinance to establish district; when; contents; taxation; basis.

Upon receiving the recommendation from the business improvement board, the city council may create one or more business improvement districts. The city council, following a hearing, may establish or reject any proposed district or districts. If the city council decides to establish any district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;

(2) The time and place the hearing was held concerning the formation of such district;

(3) A statement that a business improvement district has been established;

(4) The purposes of the district, and the public improvements and facilities to be included in such district;

(5) The description of the boundaries of such district;

(6) A statement that the businesses and users of space in the district shall be subject to the general business occupation tax or that the real property in the district will be subject to the special assessment authorized by the Business Improvement District Act;

(7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and

(8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 1979, LB 251, § 15; Laws 1983, LB 22, § 9; Laws 2015, LB168, § 11.

19-4029.01 Notice of hearing; manner given; contents; notice to neighborhood association.

(1) At least ten days prior to the date of any hearing under sections 19-4029, 19-4029.02, and 19-4029.03, notice of such hearing shall be given by:

(a) One publication of the notice of hearing in a newspaper of general circulation in the city;

(b) Mailing a copy of the notice of hearing to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county;

(c) Providing a copy of the notice of hearing to any neighborhood association registered pursuant to subsection (2) of this section in the manner requested by such neighborhood association; and

(d) If an occupation tax is to be imposed, mailing a copy of the notice of hearing to each user of space in the proposed district.

(2) The notice required by subdivision (1)(c) of this section shall be provided to any neighborhood association which is registered pursuant to this subsection and whose area of concern is located, in whole or in part, within a one-mile

radius of the existing or proposed boundaries of the district. Each neighborhood association desiring to receive such notice shall register with the city the area of concern of such association and provide the name of and contact information for the individual who is to receive notice on behalf of such association and the requested manner of service, whether by email or regular, certified, or registered mail. The registration shall be in accordance with any rules adopted and promulgated by the city.

(3) Any notice of hearing for any hearing required by section 19-4029 shall contain the following information:

(a) A description of the boundaries of the proposed district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the district;

(c) The proposed public facilities and improvements to be made or maintained within any such district; and

(d) The proposed or estimated costs for improvements and facilities within the proposed district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

(4) Any notice of hearing for any hearing required by sections 19-4029.02 and 19-4029.03 shall contain the following information:

(a) A description of the boundaries of the area to be added to the existing business improvement district and a description of the new boundaries of the modified district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the modified district;

(c) The new public facilities and improvements, if any, to be made or maintained within any such district; and

(d) The proposed or estimated costs for new and existing improvements and facilities within the proposed modified district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

Source: Laws 1979, LB 251, § 11; Laws 1983, LB 22, § 5; R.S.1943, (2012), § 19-4025; Laws 2015, LB168, § 7; Laws 2016, LB700, § 2.

19-4029.02 Expansion of boundaries; procedure; ordinance; hearing.

Upon receiving the recommendation to expand the boundaries of an existing business improvement district from the business improvement board, the city council may expand the boundaries of one or more business improvement districts by adopting an ordinance to expand the boundaries of a district or districts. Prior to adopting the ordinance, a hearing shall be held to consider the ordinance.

Source: Laws 2015, LB168, § 12.

19-4029.03 Hearing for expansion of boundaries; call by petition.

In the event that the city council has not acted to call a hearing to expand district boundaries as provided in section 19-4029.02, it shall do so when presented with a petition signed by the users of thirty percent of space in a

business area proposed to be added to an existing business improvement district where an occupation tax is imposed or by the record owners of thirty percent of the assessable front footage in a portion of a business area proposed to be added to an existing business improvement district.

Source: Laws 2015, LB168, § 13.

19-4029.04 Hearing for expansion of boundaries; city council; duties; protest; effect.

Whenever a hearing is held to expand district boundaries under section 19-4029.02 or 19-4029.03, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the modified district as proposed. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of space in the modified district as proposed.

Source: Laws 2015, LB168, § 14.

19-4029.05 Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.

The city council, following a hearing under section 19-4029.02 or 19-4029.03, may expand the boundaries of any district or districts. If the city council decides to expand the boundaries, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) The name of the district whose boundaries will be expanded;
- (2) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;
- (3) The time and place the hearing was held concerning the new boundaries of such district;
- (4) The purposes of the boundary expansion and any new public improvements and facilities to be included in such district;
- (5) The description of the new boundaries of such district;
- (6) A statement that the businesses and users of space in the modified district established by the ordinance shall be subject to the general business occupation tax or that the real property in the modified district will be subject to the special assessment authorized by the Business Improvement District Act;
- (7) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed; and
- (8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In

the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: Laws 2015, LB168, § 15.

19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien; area within riverfront development district; how treated.

A city may levy a special assessment against the real estate located in a business improvement district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under the Business Improvement District Act shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected. If any part of a business improvement district overlaps with a riverfront development district in which a special assessment is already being levied pursuant to section 19-5313, the city creating the business improvement district shall not impose the business improvement district's special assessment within the overlapping area.

Source: Laws 1979, LB 251, § 16; Laws 1983, LB 22, § 10; Laws 2015, LB168, § 16; Laws 2017, LB97, § 18.

19-4031 District; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis; area within riverfront development district; how treated.

(1) In addition to or in place of the special assessments authorized by the Business Improvement District Act, a city may levy a general business occupation tax upon the businesses and users of space within a district established for acquiring, constructing, maintaining or operating public offstreet parking facilities and providing in connection therewith other public improvements and facilities authorized by the Business Improvement District Act, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within such district. Notice of a hearing on any such

tax levied under the Business Improvement District Act shall be given to the businesses and users of space of such districts, and appeals may be taken, all in the manner provided in section 19-4030.

(2) After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

(3) If any part of a business improvement district overlaps with a riverfront development district in which a general business occupation tax is already being levied pursuant to section 19-5312, the city creating the business improvement district shall not impose the business improvement district's occupation tax within the overlapping area.

Source: Laws 1979, LB 251, § 17; Laws 1983, LB 22, § 11; Laws 2014, LB474, § 9; Laws 2017, LB97, § 19.

19-4033 Assessments or taxes; limitations; effect.

The total amount of assessments or general business occupation taxes levied under the Business Improvement District Act shall not exceed the total costs and expenses of performing the authorized work. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

Source: Laws 1979, LB 251, § 19; Laws 1983, LB 22, § 12; Laws 2015, LB168, § 17.

19-4034 Business improvement district; special assessment or business occupation tax; exceptions; maintenance, repair, or reconstruction; levy; procedure.

A city may levy a general business occupation tax, or a special assessment against the real estate located in a district to the extent of special benefit to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, and reconstruction, including utility costs of any improvement or facility in the district. Districts created for taxation or assessment of maintenance, repair, and reconstruction costs, including utility costs of improvements or facilities which are authorized by the Business Improvement District Act, but which were not acquired or constructed pursuant to the act, may be taxed or assessed as provided in the act. Any occupation tax levied under this section shall be limited to those improvements and facilities authorized by section 19-4030. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145,

66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The city council may levy such taxes or assessments under either of the following methods:

(1) The city council, sitting as a board of equalization, may, not more frequently than annually, determine the costs of maintenance or repair, and reconstruction, of a facility. Such costs shall be either assessed to the real estate located in such district in accordance with the proposed method of assessment, or taxed against the businesses and users of space in the district, whichever may be applicable as determined by the ordinance creating the district. However, if the city council finds that the method of assessment proposed in the ordinance creating the district does not provide a fair and equitable method of apportioning such costs, then it may assess the costs under such method as the city council finds to be fair and equitable. At the hearing on such taxes or assessments, objections may be made to the total cost and the proposed allocation of such costs among the parcels of real estate or businesses in such district; or

(2) After notice is given to the owners or businesses as provided in section 19-4030 the city council may establish and may change from time to time, the percentage of such costs for maintenance, repair, and reconstruction which each parcel of real estate or each business or user of space in any district shall pay. The city council shall annually determine the total amount of such costs for each period since costs were last taxed or assessed, and shall, after a hearing, tax or assess such costs to the real estate in the district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in section 19-4030 and shall state the total costs and percentage to be taxed or assessed to each parcel of real estate. Unless objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages should be deemed to have been waived and the assessments shall be levied as stated in such notice except that the city council may reduce any assessment percentage.

Source: Laws 1979, LB 251, § 20; Laws 1983, LB 22, § 13; Laws 2014, LB474, § 10.

19-4037 Funds and grants; use.

The city is authorized to receive, administer, and disburse donated funds or grants of federal or state funds for the purposes of and in the manner authorized by the Business Improvement District Act.

Source: Laws 1979, LB 251, § 23; Laws 2015, LB168, § 18.

19-4038 Districts created prior to May 23, 1979; governed by act.

Any business improvement district or any downtown improvement and parking district created prior to May 23, 1979, pursuant to sections 19-3401 to 19-3420 or 19-4001 to 19-4014, shall continue in existence and shall hereafter be governed by the Business Improvement District Act.

Source: Laws 1979, LB 251, § 24; Laws 2015, LB168, § 19.

ARTICLE 51**INVESTMENT OF PUBLIC ENDOWMENT FUNDS
(Applicable to cities of more than 5,000 population.)**

Section

19-5101. Investment of public endowment funds; manner.

19-5101 Investment of public endowment funds; manner.

Pursuant to Article XI, section 1, of the Constitution of Nebraska, the Legislature authorizes the investment of public endowment funds by any city having a population of more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census in the manner required of a prudent investor who shall act with care, skill, and diligence under the prevailing circumstance and in such investments as the governing body of such city, acting in a fiduciary capacity for the exclusive purpose of protecting and benefiting such investment, may determine.

Source: Laws 2009, LB402, § 3; Laws 2017, LB113, § 33.

ARTICLE 52**NEBRASKA MUNICIPAL LAND BANK ACT**

Section

- 19-5201. Act, how cited.
- 19-5202. Legislative findings and declarations.
- 19-5203. Terms, defined.
- 19-5204. Creation of land bank; procedure; use of Interlocal Cooperation Act; goal of land bank.
- 19-5205. Board; requirements; members; qualifications; vacancy; compensation; meetings; actions of board; liability; automatically accepted bid procedure; reasons.
- 19-5206. Agents and employees.
- 19-5207. Land bank; powers; no power of eminent domain.
- 19-5208. Land bank; acquire property; limits; maintenance; accept transfer from land reutilization authority.
- 19-5209. Exemption from taxation.
- 19-5210. Land bank; hold property in own name; inventory; consideration for transfer of property; form; powers; priorities for use; limits on certain dispositions.
- 19-5211. Land bank; funding; real property taxes collected on conveyed property; allocation; notice to county treasurer; when required.
- 19-5212. Land bank; bonds; issuance; procedure; negotiable instruments; tax exempt; liability.
- 19-5213. Board; minutes; record; meetings; public records; reports.
- 19-5214. Land bank; dissolution; procedure; notice; assets.
- 19-5215. Conflicts of interest; board; duties.
- 19-5216. Tax lien or claim; discharge and extinguishment; procedure; remit payments to county treasurer.
- 19-5217. Sale of property for nonpayment of taxes; land bank; power to bid; purchase of tax sale certificate; apply for tax deed or foreclose lien.
- 19-5218. Sale of property as part of foreclosure proceedings; land bank; powers.

19-5201 Act, how cited.

Sections 19-5201 to 19-5218 shall be known and may be cited as the Nebraska Municipal Land Bank Act.

Source: Laws 2013, LB97, § 1.

19-5202 Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) Nebraska's municipalities are important to the social and economic vitality of the state, and many municipalities are struggling to cope with vacant, abandoned, and tax-delinquent properties;

(2) Vacant, abandoned, and tax-delinquent properties represent lost revenue to municipalities and large costs associated with demolition, safety hazards, and the deterioration of neighborhoods;

(3) There is an overriding public need to confront the problems caused by vacant, abandoned, and tax-delinquent properties through the creation of new tools for municipalities to use to turn vacant spaces into vibrant places; and

(4) Land banks are one of the tools that can be utilized by municipalities to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

Source: Laws 2013, LB97, § 2.

19-5203 Terms, defined.

For purposes of the Nebraska Municipal Land Bank Act:

(1) Board means the board of directors of a land bank;

(2) Land bank means a land bank established in accordance with the act;

(3) Municipality means any city or village of this state that is located (a) within a county in which a city of the metropolitan class is located or (b) within a county in which at least three cities of the first class are located; and

(4) Real property means lands, lands under water, structures, and any and all easements, air rights, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise, and any and all fixtures and improvements located thereon.

Source: Laws 2013, LB97, § 3.

19-5204 Creation of land bank; procedure; use of Interlocal Cooperation Act; goal of land bank.

(1) A municipality may elect to create a land bank by the adoption of an ordinance which specifies the following:

(a) The name of the land bank;

(b) The initial individuals to serve as members of the board and the length of terms for which they are to serve; and

(c) The qualifications and terms of office of members of the board.

(2) Two or more municipalities may elect to enter into an agreement pursuant to the Interlocal Cooperation Act to create a single land bank to act on behalf of such municipalities, which agreement shall contain the information required by subsection (1) of this section.

(3) Each land bank created pursuant to the Nebraska Municipal Land Bank Act shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of the state and shall have permanent and perpetual duration until terminated and dissolved in accordance with section 19-5214.

(4) The primary goal of any land bank shall be to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

Source: Laws 2013, LB97, § 4.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5205 Board; requirements; members; qualifications; vacancy; compensation; meetings; actions of board; liability; automatically accepted bid procedure; reasons.

(1) If a land bank is created by a single municipality, the board of such land bank shall meet the following requirements:

(a) The board shall consist of:

(i) Seven voting members appointed by the mayor of the municipality that created the land bank and confirmed by a two-thirds vote of the governing body of such municipality;

(ii) The planning director of the municipality that created the land bank or his or her designee, as a nonvoting, ex officio member;

(iii) One member of the governing body of the municipality that created the land bank, appointed by such governing body, as a nonvoting, ex officio member; and

(iv) Such other nonvoting members as are appointed by the mayor of the municipality that created the land bank;

(b) The seven voting members of the board shall be residents of the municipality that created the land bank;

(c) If the governing body of the municipality creating the land bank has any of its members elected by district or ward, then at least one voting member of the board shall be appointed from each such district or ward. Such voting members shall represent, to the greatest extent possible, the racial and ethnic diversity of the municipality creating the land bank;

(d) The seven voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates;

(e) The seven voting members of the board shall include:

(i) At least one member representing a chamber of commerce;

(ii) At least one member with experience in banking;

(iii) At least one member with experience in real estate development;

(iv) At least one member with experience as a realtor;

(v) At least one member with experience in nonprofit or affordable housing; and

(vi) At least one member with experience in large-scale residential or commercial property rental; and

(f) A single voting member may satisfy more than one of the requirements provided in subdivision (1)(e) of this section if he or she has the required qualifications. It is not necessary that there be a different member to fulfill each such requirement.

(2) If a land bank is created by more than one municipality pursuant to an agreement under the Interlocal Cooperation Act, the board of such land bank shall meet the following requirements:

(a) The board shall consist of:

(i) An odd number of voting members, totaling at least seven, appointed by the mayors of the municipalities that created the land bank, as mutually agreed to by such mayors, and confirmed by a two-thirds vote of the governing body of each municipality that created the land bank;

(ii) The planning director of each municipality that created the land bank or his or her designee, as nonvoting, ex officio members;

(iii) One member of the governing body of each municipality that created the land bank, appointed by the governing body on which such member serves, as nonvoting, ex officio members; and

(iv) Such other nonvoting members as are appointed by the mayors of the municipalities that created the land bank, as mutually agreed to by such mayors;

(b) Each voting member of the board shall be a resident of one of the municipalities that created the land bank, with at least one voting member appointed from each such municipality;

(c) If the governing body of the largest municipality creating the land bank has any of its members elected by district or ward, then at least one voting member of the board shall be appointed from each such district or ward. Such voting members shall represent, to the greatest extent possible, the racial and ethnic diversity of the largest municipality creating the land bank;

(d) The voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates;

(e) The voting members of the board shall include:

(i) At least one member representing a chamber of commerce;

(ii) At least one member with experience in banking;

(iii) At least one member with experience in real estate development;

(iv) At least one member with experience as a realtor;

(v) At least one member with experience in nonprofit or affordable housing; and

(vi) At least one member with experience in large-scale residential or commercial property rental; and

(f) A single voting member may satisfy more than one of the requirements provided in subdivision (2)(e) of this section if he or she has the required qualifications. It is not necessary that there be a different member to fulfill each such requirement.

(3) The members of the board shall select annually from among themselves a chairperson, a vice-chairperson, a treasurer, and such other officers as the board may determine.

(4) A public official or public employee shall be eligible to be a member of the board.

(5) A vacancy on the board among the appointed board members shall be filled in the same manner as the original appointment.

(6) Board members shall serve without compensation.

(7) The board shall meet in regular session according to a schedule adopted by the board and shall also meet in special session as convened by the chairperson or upon written notice signed by a majority of the voting members. The presence of a majority of the voting members of the board shall constitute a quorum.

(8) Except as otherwise provided in subsections (9) and (11) of this section and in sections 19-5210 and 19-5214, all actions of the board shall be approved by the affirmative vote of a majority of the voting members present and voting.

(9) Any action of the board on the following matters shall be approved by a majority of the voting members:

(a) Adoption of bylaws and other rules and regulations for conduct of the land bank's business;

(b) Hiring or firing of any employee or contractor of the land bank. This function may, by majority vote of the voting members, be delegated by the board to a specified officer or committee of the land bank, under such terms and conditions, and to the extent, that the board may specify;

(c) The incurring of debt;

(d) Adoption or amendment of the annual budget; and

(e) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than fifty thousand dollars.

(10) Members of a board shall not be liable personally on the bonds or other obligations of the land bank, and the rights of creditors shall be solely against such land bank.

(11) The board shall adopt policies and procedures to specify the conditions that must be met in order for the land bank to give an automatically accepted bid as authorized in sections 19-5217 and 19-5218. The adoption of such policies and procedures shall require the approval of two-thirds of the voting members of the board. At a minimum, such policies and procedures shall ensure that the automatically accepted bid shall only be given for one of the following reasons:

(a) The real property substantially meets more than one of the following criteria as determined by two-thirds of the voting members of the board:

(i) The property is not occupied by the owner or any lessee or licensee of the owner;

(ii) There are no utilities currently being provided to the property;

(iii) Any buildings on the property have been deemed unfit for human habitation, occupancy, or use by local housing officials;

(iv) Any buildings on the property are exposed to the elements such that deterioration of the building is occurring;

(v) Any buildings on the property are boarded up;

(vi) There have been previous efforts to rehabilitate any buildings on the property;

(vii) There is a presence of vermin, uncut vegetation, or debris accumulation on the property;

(viii) There have been past actions by the municipality to maintain the grounds or any building on the property; or

(ix) The property has been out of compliance with orders of local housing officials;

(b) The real property is contiguous to a parcel that meets more than one of the criteria in subdivision (11)(a) of this section or that is already owned by the land bank; or

(c) Acquisition of the real property by the land bank would serve the best interests of the community as determined by two-thirds of the voting members of the board. In determining whether the acquisition would serve the best interests of the community, the board shall take into consideration the hierarchical ranking of priorities for the use of real property conveyed by a land bank established pursuant to subsection (5) of section 19-5210, if any such hierarchical ranking is established.

Source: Laws 2013, LB97, § 5; Laws 2016, LB699, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5206 Agents and employees.

A land bank may employ such agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons.

Source: Laws 2013, LB97, § 6.

19-5207 Land bank; powers; no power of eminent domain.

(1) A land bank shall have the following powers:

(a) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(b) To sue and be sued in its own name and plead and be impleaded in all civil actions;

(c) To borrow money from private lenders, from municipalities, from the state, or from federal government funds as may be necessary for the operation and work of the land bank;

(d) To issue negotiable revenue bonds and notes according to the provisions of the Nebraska Municipal Land Bank Act;

(e) To procure insurance or guarantees from the state or federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith;

(f) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act for the joint exercise of powers under the Nebraska Municipal Land Bank Act;

(g) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of functions by the land bank on behalf of municipalities or agencies or departments of municipalities, or the performance by municipalities or agencies or departments of municipalities of functions on behalf of the land bank;

(h) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the land bank;

(i) To provide foreclosure prevention counseling and re-housing assistance;

(j) To procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(k) To invest money of the land bank, at the discretion of the board, in instruments, obligations, securities, or property determined proper by the board and name and use depositories for its money;

(l) To enter into contracts for the management of, the collection of rent from, or the sale of real property of the land bank;

(m) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property of the land bank;

(n) To fix, charge, and collect fees and charges for services provided by the land bank;

(o) To fix, charge, and collect rents and leasehold payments for the use of real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank;

(p) To grant or acquire a license, easement, lease, as lessor and as lessee, or option with respect to real property of the land bank;

(q) To enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property; and

(r) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibilities of the land bank.

(2) A land bank shall neither possess nor exercise the power of eminent domain.

Source: Laws 2013, LB97, § 7.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5208 Land bank; acquire property; limits; maintenance; accept transfer from land reutilization authority.

(1) A land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the land bank considers proper.

(2) A land bank may acquire real property or interests in real property by purchase contracts, lease-purchase agreements, installment sales contracts, or land contracts and may accept transfers from political subdivisions upon such terms and conditions as agreed to by the land bank and the political subdivision. Notwithstanding any other law to the contrary, any political subdivision may transfer to the land bank real property and interests in real property of the political subdivision on such terms and conditions and according to such procedures as determined by the political subdivision.

(3) A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(4) A land bank shall not own or hold real property located outside the jurisdictional boundaries of the municipality or municipalities that created the land bank. For purposes of this subsection, jurisdictional boundaries of a municipality does not include the extraterritorial zoning jurisdiction of such municipality.

(5) A land bank may accept transfers of real property and interests in real property from a land reutilization authority on such terms and conditions, and according to such procedures, as mutually determined by the transferring land reutilization authority and the land bank.

(6) A land bank shall not hold legal title at any one time to more than seven percent of the total number of parcels of real property located in the municipality or municipalities that created the land bank.

Source: Laws 2013, LB97, § 8.

19-5209 Exemption from taxation.

The real property of a land bank and the land bank's income and operations are exempt from all taxation by the state or any political subdivision thereof.

Source: Laws 2013, LB97, § 9.

19-5210 Land bank; hold property in own name; inventory; consideration for transfer of property; form; powers; priorities for use; limits on certain dispositions.

(1) A land bank shall hold in its own name all real property acquired by the land bank irrespective of the identity of the transferor of such property.

(2) A land bank shall maintain and make available for public review and inspection an inventory of all real property held by the land bank.

(3) A land bank shall determine and set forth in policies and procedures of the board the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board to be in the best interest of the land bank.

(4) A land bank may convey, exchange, sell, transfer, grant, release and demise, pledge, and hypothecate any and all interests in, upon, or to real property of the land bank. A land bank may lease as lessor real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank.

(5) The municipality or municipalities that created the land bank may establish by resolution or ordinance a hierarchical ranking of priorities for the use of real property conveyed by a land bank. Such ranking shall take into consideration the highest and best use that, when possible, will bring the greatest benefit to the community. The priorities may include, but are not limited to, (a) use for purely public spaces and places, (b) use for affordable

housing, (c) use for retail, commercial, and industrial activities, (d) use for urban agricultural activities including the establishment of community gardens as defined in section 2-303, and (e) such other uses and in such hierarchical order as determined by the municipality or municipalities.

(6) The municipality or municipalities that created the land bank may require by resolution or ordinance that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board. Except and unless restricted or constrained in this manner, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank.

Source: Laws 2013, LB97, § 10; Laws 2016, LB699, § 2.

19-5211 Land bank; funding; real property taxes collected on conveyed property; allocation; notice to county treasurer; when required.

(1) A land bank may receive funding through grants and loans from the municipality or municipalities that created the land bank, from other municipalities, from the state, from the federal government, and from other public and private sources.

(2) A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under the Nebraska Municipal Land Bank Act.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, fifty percent of the real property taxes collected on real property conveyed by a land bank pursuant to the laws of this state shall be remitted to the land bank. Such allocation of property tax revenue shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. Such allocation of property tax revenue shall not occur if such taxes have been divided under section 18-2147 as part of a redevelopment project under the Community Development Law, unless the authority, as defined in section 18-2103, enters into an agreement with the land bank for the remittance of such funds to the land bank.

(b) A land bank may, by resolution of the board, elect not to receive the real property taxes described in subdivision (a) of this subsection for any real property conveyed by the land bank. If such an election is made, the land bank shall notify the county treasurer of the county in which the real property is located by filing a copy of the resolution with the county treasurer, and thereafter the county treasurer shall remit such real property taxes to the appropriate taxing entities.

Source: Laws 2013, LB97, § 11.

Cross References

Community Development Law, see section 18-2101.

19-5212 Land bank; bonds; issuance; procedure; negotiable instruments; tax exempt; liability.

(1) A land bank shall have the power to issue bonds for any of its corporate purposes, the principal and interest of which are payable from its revenue generally. Any of such bonds shall be secured by a pledge of any revenue of the land bank or by a mortgage of any property of the land bank.

(2) The bonds issued by a land bank are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code.

(3) The bonds of a land bank and the income therefrom shall at all times be exempt from all taxes imposed by the state or any political subdivision thereof.

(4) Bonds issued by the land bank shall be authorized by resolution of the board and shall be limited obligations of the land bank. The principal and interest, costs of issuance, and other costs incidental thereto shall be payable solely from the income and revenue derived from the sale, lease, or other disposition of the assets of the land bank. Any refunding bonds issued shall be payable from any source described above or from the investment of any of the proceeds of the refunding bonds, and shall not constitute an indebtedness or pledge of the general credit of any municipality within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the land bank shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the board as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the board in the resolution authorizing the issuance thereof.

(5) Bonds issued by the land bank shall be issued, sold, and delivered in accordance with the terms and provisions of a resolution adopted by the board. The board may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interests of the land bank. The resolution issuing bonds shall be published in a newspaper of general circulation within the municipality or municipalities that created the land bank.

(6) Neither the members of the board nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Such bonds or other obligations of a land bank shall not be a debt of any municipality and shall so state on their face, nor shall any municipality nor any revenue or any property of any municipality be liable therefor.

Source: Laws 2013, LB97, § 12.

Cross References

Uniform Commercial Code, see section 1-101, Uniform Commercial Code.

19-5213 Board; minutes; record; meetings; public records; reports.

(1) The board shall cause minutes and a record to be kept of all its proceedings. Meetings of the board shall be subject to the Open Meetings Act.

(2) All of a land bank's records and documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

(3) The board shall provide monthly reports to the municipality or municipalities that created the land bank on the board's activities pursuant to the Nebraska Municipal Land Bank Act. The board shall also provide an annual report to the municipality or municipalities that created the land bank, the Revenue Committee of the Legislature, and the Urban Affairs Committee of the Legislature by March 1 of each year summarizing the board's activities for the

prior calendar year. The reports submitted to the legislative committees shall be submitted electronically.

Source: Laws 2013, LB97, § 13; Laws 2016, LB699, § 3.

Cross References

Open Meetings Act, see section 84-1407.

19-5214 Land bank; dissolution; procedure; notice; assets.

A land bank may be dissolved sixty calendar days after a resolution of dissolution is approved by two-thirds of the voting members of the board and by two-thirds of the membership of the governing body of the municipality or municipalities that created the land bank. The board shall give sixty calendar days' advance written notice of its consideration of a resolution of dissolution by publishing such notice in a newspaper of general circulation within the municipality or municipalities that created the land bank and shall send such notice by certified mail to the trustee of any outstanding bonds of the land bank. Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become the assets of the municipality or municipalities that created the land bank.

Source: Laws 2013, LB97, § 14.

19-5215 Conflicts of interest; board; duties.

(1) No member of the board or employee of a land bank shall acquire any interest, direct or indirect, in real property of the land bank, in any real property to be acquired by the land bank, or in any real property to be acquired from the land bank. No member of the board or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank.

(2) The board shall adopt:

- (a) Rules addressing potential conflicts of interest; and
- (b) Ethical guidelines for members of the board and employees of the land bank.

Source: Laws 2013, LB97, § 15.

19-5216 Tax lien or claim; discharge and extinguishment; procedure; remit payments to county treasurer.

(1) Whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to one or more political subdivisions of the state, the land bank may, by resolution of the board, discharge and extinguish any and all such liens or claims, except that no lien or claim represented by a tax sale certificate held by a private third party shall be discharged or extinguished pursuant to this section. To the extent necessary and appropriate, the land bank shall file in appropriate public records evidence of the extinguishment and dissolution of such liens or claims.

(2) To the extent that a land bank receives payments of any kind attributable to liens or claims for real property taxes owed to a political subdivision on property acquired by the land bank, the land bank shall remit the full amount

of the payments to the county treasurer of the county that levied such taxes for distribution to the appropriate taxing entity.

Source: Laws 2013, LB97, § 16.

19-5217 Sale of property for nonpayment of taxes; land bank; power to bid; purchase of tax sale certificate; apply for tax deed or foreclose lien.

(1)(a) At any sale of real property for the nonpayment of taxes conducted pursuant to sections 77-1801 to 77-1863, a land bank may:

(i) Bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the county treasurer and shall be accepted or rejected in the same manner as any other bid on such real property; or

(ii) Give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the county treasurer regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 19-5205 have been met.

(b) If a land bank's bid pursuant to subdivision (1)(a) of this section is accepted by the county treasurer, the land bank shall pay the county treasurer and shall be entitled to a tax sale certificate for such real property.

(2) If a county holds a tax sale certificate pursuant to section 77-1809, a land bank may purchase such tax sale certificate from the county by paying the county treasurer the amount expressed on the face of the certificate and interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax sale certificate was first issued to the county to the date such certificate was purchased by the land bank.

(3)(a) Subdivision (b) of this subsection applies until January 1, 2015. Subdivision (c) of this subsection applies beginning January 1, 2015.

(b) Within six months after the expiration of three years from the date of sale of real property for the nonpayment of taxes pursuant to sections 77-1801 to 77-1863, a land bank that has acquired a tax sale certificate for such real property under this section may:

(i) Apply to the county treasurer for a tax deed for the real property described in the tax sale certificate. A land bank applying for a tax deed shall comply with all the requirements of sections 77-1801 to 77-1863 relating to such tax deed; or

(ii) Foreclose the lien represented by the tax sale certificate as authorized in section 77-1902.

(c) Within nine months after the expiration of three years from the date of sale of real property for the nonpayment of taxes pursuant to sections 77-1801 to 77-1863, a land bank that has acquired a tax sale certificate for such real property under this section may:

(i) Apply to the county treasurer for a tax deed for the real property described in the tax sale certificate. A land bank applying for a tax deed shall comply with all the requirements of sections 77-1801 to 77-1863 relating to such tax deed; or

(ii) Foreclose the lien represented by the tax sale certificate as authorized in section 77-1902.

Source: Laws 2013, LB97, § 17; Laws 2014, LB851, § 1.

19-5218 Sale of property as part of foreclosure proceedings; land bank; powers.

(1)(a) At any sale of real property conducted as part of foreclosure proceedings under sections 77-1901 to 77-1941, a land bank may:

(i) Bid on such real property in an amount that the land bank would be willing to pay for such real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the sheriff conducting the sale and shall be accepted or rejected in the same manner as any other bid on such real property; or

(ii) Give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the sheriff regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 19-5205 have been met and only if the land bank has obtained written consent to the tender of an automatically accepted bid from the holder of a mortgage or the beneficiary or trustee under a trust deed giving rise to a lien against such real property. To obtain such written consent, the land bank shall send, by certified mail, a notice of its intent to make an automatically accepted bid to any such holder of a mortgage or beneficiary or trustee under a trust deed and shall request that written consent be given within thirty days. If no response is given within such thirty-day time period, such holder of a mortgage or beneficiary or trustee under a trust deed shall be deemed to have given written consent.

(b) If a land bank's bid pursuant to subdivision (1)(a) of this section is accepted by the sheriff, the land bank shall pay the sheriff and shall be entitled to a deed to the real property in accordance with sections 77-1901 to 77-1941.

(2) If a sheriff attempts to sell real property as part of foreclosure proceedings under sections 77-1901 to 77-1941, there is no bid given at such sale equal to the total amount of taxes, interest, and costs due thereon, and the real property being sold lies within a municipality that has created a land bank, then such land bank shall be deemed to have bid the total amount of taxes, interest, and costs due thereon and such bid shall be accepted by the sheriff. The land bank may then discharge and extinguish the liens for delinquent taxes included in the foreclosure proceedings pursuant to section 19-5216. The land bank shall then be entitled to a deed to the real property in accordance with sections 77-1901 to 77-1941.

Source: Laws 2013, LB97, § 18.

ARTICLE 53

RIVERFRONT DEVELOPMENT DISTRICT ACT

Section

19-5301. Act, how cited.

19-5302. Legislative findings and declarations.

19-5303. Terms, defined.

19-5304. Riverfront development district; ordinance; contents; revenue; boundaries.

Section

- 19-5305. Riverfront development authority; members; officers; vacancy; meetings; powers.
- 19-5306. Authority; powers; city; power.
- 19-5307. Authority; acquire property; limitations.
- 19-5308. Taxation.
- 19-5309. Conflict of interest.
- 19-5310. Funding.
- 19-5311. Bonds; issuance; procedure; liability.
- 19-5312. Business occupation tax; hearing; appeals; collection; area within business improvement district; how treated.
- 19-5313. Special assessment; hearing; appeals; lien; area within business improvement district; how treated.
- 19-5314. Hearing; notice; manner; decision; appeal.
- 19-5315. Additional assessment or levy; procedure.
- 19-5316. Records; meetings; reports.
- 19-5317. Dissolution of district; procedure; notice.

19-5301 Act, how cited.

Sections 19-5301 to 19-5317 shall be known and may be cited as the Riverfront Development District Act.

Source: Laws 2017, LB97, § 1.

19-5302 Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) Cities in the United States and throughout the world have been historically established along the banks of major rivers due to the role rivers played as early trade routes as well as other inherent strategic and economic benefits;

(2) As national, state, and local economies have changed over time, many cities have moved away from their historic riverfronts, resulting in abandonment and blight in many city cores;

(3) Many cities in this state that were established along the banks of Nebraska's rivers have grown away from their riverfronts, and these cities have riverfront areas in need of improvement and development but lack the tools and funding necessary to improve and develop such areas; and

(4) The purpose of the Riverfront Development District Act is to provide a means by which cities in this state may effectively fund, manage, promote, and develop riverfronts within their corporate limits.

Source: Laws 2017, LB97, § 2.

19-5303 Terms, defined.

For purposes of the Riverfront Development District Act:

(1) Authority means a riverfront development authority established in accordance with section 19-5305;

(2) City means a city of the metropolitan, primary, first, or second class;

(3) District means a riverfront development district established in accordance with section 19-5304; and

(4) River means the Missouri River, Platte River, North Platte River, South Platte River, Republican River, Niobrara River, Loup River, North Loup River,

Middle Loup River, South Loup River, Elkhorn River, North Fork of the Elkhorn River, or Big Blue River.

Source: Laws 2017, LB97, § 3.

19-5304 Riverfront development district; ordinance; contents; revenue; boundaries.

(1) A city may create a riverfront development district by the adoption of an ordinance which specifies the following:

(a) The name of the river or rivers along which the district will be created;

(b) The boundaries of the district, a map of which shall be incorporated by reference in the ordinance;

(c) The qualifications and terms of office of members of the authority;

(d) A statement that the businesses and users of space in the district shall be subject to the general business occupation tax authorized by the Riverfront Development District Act or that the real property in the district shall be subject to the special assessment authorized by the act;

(e) The proposed method of assessment to be imposed within the district or the initial rate of the occupation tax to be imposed;

(f) Any penalties to be imposed for failure to pay the occupation tax or special assessment; and

(g) The maximum amount of bonds that may be issued by the authority pursuant to section 19-5311.

(2) The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general business occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

(3) The boundaries of any district created under this section shall be wholly contained within the corporate limits of the city and shall not extend more than one-half mile from the edge of the river or rivers along which the district is created.

Source: Laws 2017, LB97, § 4.

19-5305 Riverfront development authority; members; officers; vacancy; meetings; powers.

(1) Following the creation of a district under section 19-5304, the mayor, with the approval of the city council, shall appoint a riverfront development authority to oversee and manage the district. The authority shall consist of five or more members who collectively shall have skills, expertise, and knowledge in residential, commercial, and mixed-use real estate development, financing, law, asset management, economic and community development, and tourism promotion.

(2) The members of the authority shall select annually from among themselves a chairperson, a vice-chairperson, a treasurer, and such other officers as the authority may determine.

(3) A public official or public employee shall be eligible to be a member of the authority.

(4) A vacancy on the authority shall be filled in the same manner as the original appointment.

(5) Members of the authority shall serve without compensation.

(6) The authority shall meet in regular session according to a schedule adopted by the authority and shall also meet in special session as convened by the chairperson or upon written notice signed by a majority of the members.

(7) Two or more cities which have a contiguous riverfront along the same river may enter into an agreement pursuant to the Interlocal Cooperation Act to create a single authority to jointly oversee and manage the districts created in such cities. An agreement entered into under this subsection shall contain the information required by section 19-5304.

(8) An authority which oversees and manages a district bordering another state may enter into an agreement pursuant to the Interlocal Cooperation Act with a political subdivision, public agency, or quasi-public agency in such other state to jointly oversee and manage the district and any similar district or districts in such other state.

(9) Each authority created pursuant to the Riverfront Development District Act shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of the state and shall have permanent and perpetual duration until terminated and dissolved in accordance with section 19-5317.

Source: Laws 2017, LB97, § 5.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5306 Authority; powers; city; power.

(1) Except as provided in subsection (2) of this section, an authority shall have the following powers:

(a) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(b) To sue and be sued in its own name and plead and be impleaded in all civil actions;

(c) To procure insurance or guarantees from the state or federal government of the payments of any debts or parts thereof incurred by the authority and to pay premiums in connection therewith;

(d) To invest money of the authority in instruments, obligations, securities, or property determined proper by the authority and name and use depositories for its money;

(e) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act for the joint exercise of powers under the Riverfront Development District Act;

(f) To create and implement plans for improvements and redevelopment within the boundaries of the district in conjunction with the city or other public or private entities;

(g) To develop, manage, and coordinate public activities and events taking place within the boundaries of the district;

(h) To acquire, construct, maintain, and operate public offstreet parking facilities for the benefit of the district;

(i) To improve any public place or facility within the boundaries of the district, including landscaping, physical improvements for decoration or security purposes, and plantings;

(j) To construct or install pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, pedestrian and vehicular overpasses and underpasses, and any other useful or necessary public improvements within the boundaries of the district;

(k) To construct, install, and maintain boardwalks, barges, docks, and wharves;

(l) To lease, acquire, construct, reconstruct, extend, maintain, or repair parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles within the boundaries of the district;

(m) To maintain, repair, and reconstruct any improvements or facilities authorized in the Riverfront Development District Act;

(n) To enforce parking regulations and the provision of security within the boundaries of the district;

(o) To employ such agents and employees, permanent or temporary, as necessary;

(p) To fix, charge, and collect fees and charges for services provided by the authority;

(q) To fix, charge, and collect rents and leasehold payments for the use of real property of the authority;

(r) To grant or acquire a license, easement, lease, as lessor or as lessee, or option with respect to real property of the authority;

(s) To make recommendations to the city as to the use of any occupation tax funds collected under section 19-5312 or any special assessment funds collected under section 19-5313;

(t) To administer the use of occupation tax funds or special assessment funds if directed by the mayor and city council; and

(u) To do all other things necessary or convenient to achieve the objectives and purposes of the authority.

(2) The city creating an authority may, by ordinance, limit the powers that may be exercised by such authority.

Source: Laws 2017, LB97, § 6.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5307 Authority; acquire property; limitations.

(1) An authority may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the authority considers proper.

(2) An authority may accept transfers of real property or interests in real property from political subdivisions upon such terms and conditions as agreed to by the authority and the political subdivision.

(3) An authority may convey, exchange, sell, transfer, grant, release and demise, pledge, and hypothecate any and all interests in, upon, or to real property of the authority.

(4) An authority shall hold all property acquired in its own name and shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(5) An authority shall not own or hold real property located outside the boundaries of the district which it oversees and manages.

(6) An authority shall not rent or lease any of its real property for residential use.

Source: Laws 2017, LB97, § 7.

19-5308 Taxation.

The real property owned by an authority and the authority's income and operations are exempt from all taxation by the state or any political subdivision thereof, except that purchases by an authority shall be subject to state and local sales and use taxes.

Source: Laws 2017, LB97, § 8.

19-5309 Conflict of interest.

(1) No member of an authority or employee of an authority shall acquire any interest, direct or indirect, in real property located within the boundaries of any district overseen and managed by the authority.

(2) No member of an authority or employee of an authority shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by the authority.

Source: Laws 2017, LB97, § 9.

19-5310 Funding.

An authority may receive funding through grants and loans from the city that created the authority, from other municipalities, from the state, from the federal government, and from other public and private sources.

Source: Laws 2017, LB97, § 10.

19-5311 Bonds; issuance; procedure; liability.

(1) An authority shall have the power to issue bonds for any of its corporate purposes, the principal and interest of which are payable from its revenue generally. Any of such bonds shall be secured by a pledge of any revenue of the authority or by a mortgage of any property owned by the authority.

(2) The bonds issued by an authority are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code.

(3) The bonds of an authority and the income therefrom shall at all times be exempt from all taxes imposed by the state or any political subdivision thereof.

(4) Bonds issued by an authority shall be authorized by resolution of the authority and shall be limited obligations of the authority. The principal and interest, costs of issuance, and other costs incidental thereto shall be payable by any revenue of the authority or by the disposition of any assets of the authority. Any refunding bonds issued shall be payable from any source described in this subsection or from the investment of any of the proceeds of the refunding bonds and shall not constitute an indebtedness or pledge of the general credit of any city within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the authority shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the authority as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the authority in the resolution authorizing the issuance thereof.

(5) Bonds issued by the authority shall be issued, sold, and delivered in accordance with the terms and provisions of a resolution adopted by the authority. The authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interests of the authority. The resolution authorizing the issuance of bonds shall be published in a newspaper in or of general circulation within the city that created the authority.

(6) Neither the members of the authority nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Such bonds or other obligations of an authority shall not be a debt of any city and shall so state on their face, and no city nor any revenue or any property of any city shall be liable for such bonds or other obligations except as provided in the Riverfront Development District Act.

Source: Laws 2017, LB97, § 11.

Cross References

Uniform Commercial Code, see section 1-101, Uniform Commercial Code.

19-5312 Business occupation tax; hearing; appeals; collection; area within business improvement district; how treated.

(1) A city may levy a general business occupation tax upon the businesses and users of space within a district for the purpose of paying all or any part of the total costs and expenses of such district. Notice of a hearing on any such tax levied under the Riverfront Development District Act shall be given to the businesses and users of space of such district, and appeals may be taken, in the manner provided in section 19-5314.

(2) Any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

(3) If any part of a riverfront development district overlaps with a business improvement district in which a general business occupation tax is already being levied pursuant to section 19-4031, the city creating the riverfront development district shall not impose the riverfront development district's occupation tax within the overlapping area.

Source: Laws 2017, LB97, § 12.

19-5313 Special assessment; hearing; appeals; lien; area within business improvement district; how treated.

(1) A city may levy a special assessment against the real estate located in a district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any such tax levied under the Riverfront Development District Act shall be given to the landowners in such district, and appeals may be taken, in the manner provided in section 19-5314.

(2) All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner that special assessments for improvements in street improvement districts of the city are collected.

(3) If any part of a riverfront development district overlaps with a business improvement district in which a special assessment is already being levied pursuant to section 19-4030, the city creating the riverfront development district shall not impose the riverfront development district's special assessment within the overlapping area.

Source: Laws 2017, LB97, § 13.

19-5314 Hearing; notice; manner; decision; appeal.

(1) Notice of a hearing on any general business occupation tax to be levied under the Riverfront Development District Act shall be given to the businesses and users of space in such district by publication of a description of the businesses and users of space who will be subject to the occupation tax, the amount of the occupation tax proposed to be levied, and the general purpose for which such occupation tax is to be levied one time each week for three weeks in a newspaper in or of general circulation in the city.

(2) Notice of a hearing on any special assessments to be levied under the act shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a newspaper in or of general circulation in the city.

(3) Notice under this section shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land or by businesses and users of space in the district as to the amount of occupation tax to be levied against

them. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law.

Source: Laws 2017, LB97, § 14.

19-5315 Additional assessment or levy; procedure.

If, subsequent to the levy of taxes or assessments, the use of any parcel of land shall change so that, had the new use existed at the time of making such levy, the assessment or levy on such parcel would have been higher than the levy or assessment actually made, an additional assessment or levy may be made on such parcel by the city council taking into consideration the new and changed use of the property. Reassessments or changes in the rate of levy of assessments or taxes may be made by the city council after notice and hearing as provided in section 19-5314. The city council shall adopt a resolution of intention to change the rate of levy at least fifteen days prior to the hearing required for changes. The resolution shall specify the proposed change and shall give the time and place of the hearing. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied.

Source: Laws 2017, LB97, § 15.

19-5316 Records; meetings; reports.

(1) The authority shall cause minutes and a record to be kept of all its proceedings. Meetings of the authority shall be subject to the Open Meetings Act.

(2) All of an authority's records and documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

(3) The authority shall provide quarterly reports to the city that created the authority on the authority's activities pursuant to the Riverfront Development District Act. The authority shall also provide an annual report to the city that created the authority and to the Urban Affairs Committee of the Legislature by January 31 of each year summarizing the authority's activities for the prior calendar year. The report submitted to the committee shall be submitted electronically.

Source: Laws 2017, LB97, § 16.

Cross References

Open Meetings Act, see section 84-1407.

19-5317 Dissolution of district; procedure; notice.

(1) A district or an authority may be dissolved sixty calendar days after a resolution of dissolution is approved by the city council of the city that created the district or authority. Notice of consideration of a resolution of dissolution shall be given by publishing such notice in a newspaper in or of general circulation within the city that created the district or authority. Such notice shall also be sent by certified mail to the trustee of any outstanding bonds of the authority.

(2) Upon dissolution of an authority, all real property, personal property, and other assets of the authority shall become the assets of the city that created the authority.

(3) Upon dissolution of a district, any proceeds of the occupation tax or the special assessment relating to such district shall be subject to disposition as the city council shall determine.

Source: Laws 2017, LB97, § 17.

ARTICLE 54

VACANT PROPERTY REGISTRATION ACT

Section

- 19-5401. Act, how cited.
- 19-5402. Legislative findings and declarations.
- 19-5403. Purposes of act.
- 19-5404. Terms, defined.
- 19-5405. Vacant property registration ordinance; adoption by municipality.
- 19-5406. Registration of property; duty of owner; information required; fee; exemptions.
- 19-5407. Vacant property registration ordinance; contents; program administrator; powers.
- 19-5408. Supplemental provisions.

19-5401 Act, how cited.

Sections 19-5401 to 19-5408 shall be known and may be cited as the Vacant Property Registration Act.

Source: Laws 2018, LB256, § 1.
Effective date July 19, 2018.

19-5402 Legislative findings and declarations.

The Legislature finds and declares that:

(1) Vacant properties have the potential to create a host of problems for Nebraska communities, including a propensity to foster criminal activity, create public health problems, and otherwise diminish quality of life;

(2) Vacant properties have the potential to reduce the value of area properties, increase the risk of property damage through arson and vandalism, and discourage neighborhood stability;

(3) Vacant properties represent unrealized economic growth in Nebraska communities;

(4) A vacant property registration ordinance allows a municipality to discourage property vacancy, maintain unoccupied buildings, provide a data base of vacant properties and their owners, and assess fees for the increased public costs associated with vacant properties;

(5) Fees imposed under a vacant property registration ordinance have the potential to benefit the owners of vacant properties by helping to finance additional government services to protect the value and security of such properties; and

(6) Enactment of a vacant property registration ordinance is a proper exercise of governmental authority to protect the public health, safety, and welfare of community residents and a valid regulatory scheme.

Source: Laws 2018, LB256, § 2.
Effective date July 19, 2018.

19-5403 Purposes of act.

The purposes of the Vacant Property Registration Act are to promote the health, safety, and welfare of Nebraska residents by providing authority for municipalities to enact vacant property registration ordinances. Such ordinances will allow communities to identify and register vacant properties, collect fees to compensate for the public costs of vacant properties, plan for the rehabilitation of vacant properties, and encourage the occupancy of vacant properties.

Source: Laws 2018, LB256, § 3.
Effective date July 19, 2018.

19-5404 Terms, defined.

For purposes of the Vacant Property Registration Act:

(1) Evidence of vacancy means any condition or circumstance that on its own or in combination with other conditions or circumstances would lead a reasonable person to believe that a residential building or commercial building is vacant. Such conditions or circumstances may include, but are not limited to:

(a) Overgrown or dead vegetation, including grass, shrubbery, and other plantings;

(b) An accumulation of abandoned personal property, trash, or other waste;

(c) Visible deterioration or lack of maintenance of any building or structure on the property;

(d) Graffiti or other defacement of any building or structure on the property;
or

(e) Any other condition or circumstance reasonably indicating that the property is not occupied for residential purposes or being used for the operation of a lawful business;

(2) Municipality means a city of the first class, city of the second class, or village;

(3) Owner means the person or persons shown to be the owner or owners of record on the records of the register of deeds;

(4) Residential building means a house, a condominium, a townhouse, an apartment unit or building, or a trailer house; and

(5) Vacant means that a residential building or commercial building exhibits evidence of vacancy.

Source: Laws 2018, LB256, § 4.
Effective date July 19, 2018.

19-5405 Vacant property registration ordinance; adoption by municipality.

Under the Vacant Property Registration Act, a municipality may adopt a vacant property registration ordinance which applies to any type of either residential or commercial buildings or both, located within the corporate limits of the municipality, except that a vacant property registration ordinance shall not apply to property owned by the federal government, the State of Nebraska, or any political subdivision thereof. A vacant property registration ordinance

shall create a city-wide vacant property registration data base and clearly designate a program administrator.

Source: Laws 2018, LB256, § 5.

Effective date July 19, 2018.

19-5406 Registration of property; duty of owner; information required; fee; exemptions.

(1) Owners of vacant property subject to a vacant property registration ordinance adopted pursuant to section 19-5405 shall be required to register such property with the program administrator if the property has been vacant for one hundred eighty days or longer. A vacant property registration ordinance registration form shall be in either paper or electronic form, and the following information shall be required:

(a) The name, street address, mailing address, telephone number, and, if applicable, the facsimile number and email address of the property owner and his or her agent;

(b) The street address and parcel identification number of the vacant property;

(c) The transfer date of the instrument conveying the property to the owner; and

(d) The date on which the property became vacant.

(2)(a) A vacant property registration ordinance may require payment of a fee one hundred eighty days after initial registration of the vacant property pursuant to subsection (1) of this section or three hundred sixty days after the property becomes vacant, whichever is sooner, and may require the payment of supplemental registration fees at intervals not more frequently than every six months thereafter for as long as the property remains on the vacant property registration data base. The initial registration fee shall be not more than two hundred fifty dollars for a residential property and not more than one thousand dollars for a commercial property. A supplemental registration fee shall be not more than double the previous fee amount, with a maximum supplemental registration fee of ten times the initial registration fee amount. Registration fees may be refundable for the year preceding the date on which the property is no longer vacant.

(b) A vacant property registration ordinance shall provide an exemption to the registration and fee requirements for vacant property that is advertised in good faith for sale or lease.

(c) A vacant property registration ordinance may provide exemptions to the registration and fee requirements, including, but not limited to, for vacant property:

(i) Only considered to be a seasonal residence;

(ii) Damaged by fire, weather, an act of God, or vandalism;

(iii) Under construction or renovation;

(iv) Where the owner is temporarily absent, but who has demonstrated his or her intent to return; and

(v) Which is subject to divorce, probate, or estate proceedings.

Source: Laws 2018, LB256, § 6.

Effective date July 19, 2018.

19-5407 Vacant property registration ordinance; contents; program administrator; powers.

(1) A vacant property registration ordinance shall:

(a) Provide that a subsequent owner or owners of property subject to the ordinance will assume the obligations of the previous owner or owners;

(b) Provide for removal of the property from the vacant property registration data base when the property is no longer vacant;

(c) Require submission of an owner plan for occupancy of the property; and

(d) Provide that owners have the right to prior notice and to appeal adverse decisions of the municipality or the program administrator. Such notice shall be sent by certified mail to the registered owner at the address maintained in the register of deeds' office at least ten days prior to such adverse decision.

(2) A vacant property registration ordinance may allow the program administrator or his or her designee to inspect the interior and exterior of the vacant property upon registration and at one-year intervals thereafter for so long as the property remains on the vacant property registration data base. A vacant property registration ordinance may provide for municipal fines for failure to comply with its requirements. A municipality may enforce the collection of vacant property registration fees by civil action in any court of competent jurisdiction. Unpaid vacant property registration fees and unpaid fines for any violation of a vacant property registration ordinance shall become a lien on the applicable property upon the recording of a notice of such lien in the office of the register of deeds of the county in which the applicable property is located. The lien created under this subsection shall be subordinate to all liens on the applicable property recorded prior to the time the notice of such lien under this subsection is recorded.

Source: Laws 2018, LB256, § 7.

Effective date July 19, 2018.

19-5408 Supplemental provisions.

The provisions of the Vacant Property Registration Act shall be supplemental and in addition to any other laws of the State of Nebraska relating to vacant property.

Source: Laws 2018, LB256, § 8.

Effective date July 19, 2018.

CHAPTER 20

CIVIL RIGHTS

Article.

1. Individual Rights.
 - (f) Consumer Information. 20-149.
 - (g) Interpreters. 20-150 to 20-159.
 - (k) Mother Breast-Feed Child. 20-170.
5. Racial Profiling. 20-501 to 20-506.

ARTICLE 1

INDIVIDUAL RIGHTS

(f) CONSUMER INFORMATION

- | | |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section | |
| 20-149. | Consumer reporting agency; furnish information; duty; violation; penalty. |
| | (g) INTERPRETERS |
| 20-150. | Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent. |
| 20-151. | Terms, defined. |
| 20-156. | Commission; interpreters; video remote interpreting providers; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized. |
| 20-156.01. | Prohibited acts without license; licensure; application; civil penalty; commission; powers; acts authorized. |
| 20-159. | Fees authorized. |
| | (k) MOTHER BREAST-FEED CHILD |
| 20-170. | Mother; right to breast-feed child; school; provide facilities or accommodation for milk expression and storage. |

(f) CONSUMER INFORMATION

20-149 Consumer reporting agency; furnish information; duty; violation; penalty.

Any consumer reporting agency doing business in this state which is required to furnish information to a consumer, protected consumer as defined in section 8-2602, or representative as defined in section 8-2602 pursuant to 15 U.S.C. 1681g to 1681j as such sections existed on January 1, 2016, shall, upon the request of such consumer, protected consumer, or representative and at a reasonable charge, provide such consumer, protected consumer, or representative with a typewritten or photostatic copy of any consumer report, investigative report, or any credit report or other file information which it has on file or has prepared concerning such consumer or protected consumer, if such consumer, protected consumer, or representative has complied with 15 U.S.C. 1681h as such section existed on January 1, 2016. If such report uses a code to convey information about such consumer or protected consumer, such consumer, protected consumer, or representative shall be provided with a key to such code. For the purposes of this section, the definitions found in 15 U.S.C. 1681a as such section existed on January 1, 2016, shall apply. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1983, LB 197, § 1; Laws 2016, LB835, § 21.

Credit Report Protection Act, see section 8-2601.

(g) INTERPRETERS

20-150 Legislative findings; licensed interpreters; qualified educational interpreters; legislative intent.

(1) The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of deaf and hard of hearing persons who cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of state agencies and law enforcement personnel unless interpreters are available to assist them. State agencies and law enforcement personnel shall appoint licensed interpreters as provided in sections 20-150 to 20-159, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and 25-2401 to 25-2407 and public school districts and educational service units shall appoint qualified educational interpreters.

(2) The Commission for the Deaf and Hard of Hearing shall license and evaluate interpreters and video remote interpreting providers pursuant to section 20-156. The commission shall (a) develop licensed interpreter guidelines for distribution, (b) develop training to implement the guidelines, (c) adopt and promulgate rules and regulations to implement the guidelines and requirements for licensed interpreters, and (d) develop a roster of interpreters as required in section 71-4728.

(3) It is the intent of the Legislature to assure that qualified educational interpreters are provided to deaf and hard of hearing children in kindergarten-through-grade-twelve public school districts and educational service units. The State Department of Education shall adopt and promulgate rules and regulations to implement the guidelines and requirements for qualified educational interpreters, and such rules and regulations shall apply to all qualified educational interpreters.

Source: Laws 1987, LB 376, § 1; Laws 1997, LB 851, § 1; Laws 2002, LB 22, § 1; Laws 2006, LB 87, § 1; Laws 2015, LB287, § 1.

Cross References

Legal proceedings, use of interpreters, see section 25-2401 et seq.

20-151 Terms, defined.

For purposes of sections 20-150 to 20-159, unless the context otherwise requires:

(1) Appointing authority means the state agency or law enforcement personnel required to provide a licensed interpreter pursuant to sections 20-150 to 20-159;

(2) Auxiliary aid includes, but is not limited to, sign language interpreters, oral interpreters, tactile interpreters, other interpreters, notetakers, transcription services, written materials, assistive listening devices, assisted listening systems, videotext displays, and other visual delivery systems;

(3) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have

difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or other auxiliary aid;

(4) Intermediary interpreter means any person, including any deaf or hard of hearing person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language in order to facilitate communication between a deaf or hard of hearing person and an interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the rules and regulations adopted and promulgated by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150 and who holds a license issued by the commission pursuant to section 20-156. Licensed interpreter includes a licensed video remote interpreting provider;

(6) Oral interpreter means a person who interprets language through facial expression, body language, and mouthing;

(7) State agency means any state entity which receives appropriations from the Legislature and includes the Legislature, legislative committees, executive agencies, courts, and probation officials but does not include political subdivisions;

(8) Tactile interpreter means a person who interprets for a deaf-blind person. The degree of deafness and blindness will determine the mode of communication to be used for each person;

(9) Video remote interpreting services means the use of videoconferencing technology with the intent to provide effective interpreting services; and

(10) Video remote interpreting provider means a person or an entity licensed to provide video remote interpreting services.

Source: Laws 1987, LB 376, § 2; Laws 1997, LB 851, § 2; Laws 2002, LB 22, § 2; Laws 2006, LB 87, § 2; Laws 2015, LB287, § 2.

20-156 Commission; interpreters; video remote interpreting providers; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 71-4728.05 to set policies, standards, and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters and video remote interpreting providers, including applications, initial competency assessments, renewals, modifications, record keeping, approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State

Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The commission shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 shall be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee is found to have violated any provision of sections 20-150 to 20-159 or 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 or rules and regulations of the commission and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

(6) Any person or entity providing interpreting services pursuant to sections 20-150 to 20-159 without a license issued pursuant to this section may be restrained by temporary and permanent injunctions and on and after January 1, 2016, shall be subject to a civil penalty as provided in section 20-156.01.

Source: Laws 1987, LB 376, § 7; Laws 1997, LB 752, § 78; Laws 1997, LB 851, § 8; Laws 2002, LB 22, § 6; Laws 2006, LB 87, § 3; Laws 2010, LB706, § 1; Laws 2015, LB287, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

20-156.01 Prohibited acts without license; licensure; application; civil penalty; commission; powers; acts authorized.

(1) Except as otherwise provided in this section, no person or entity shall (a) practice as an interpreter for the deaf or hard of hearing for compensation, (b) hold himself, herself, or itself out as a licensed interpreter for the deaf or hard of hearing, (c) provide video remote interpreting services, (d) use the title Licensed Interpreter for the Deaf or Licensed Transliterator for the Deaf, or (e) use any other title or abbreviation to indicate that the person or entity is a licensed interpreter unless licensed pursuant to section 20-156.

(2) A person rostered as a qualified interpreter on or before August 30, 2015, may be issued a license pursuant to section 20-156 upon filing an application and paying the fee established by the Commission for the Deaf and Hard of Hearing. Such person shall meet all applicable licensure requirements of sections 20-150 to 20-159 on or before January 1, 2016.

(3)(a) On and after January 1, 2016, any person or entity who practices, offers to practice, or attempts to practice as an interpreter for the deaf or hard of hearing for compensation or as a video remote interpreting provider or holds himself, herself, or itself out as a licensed interpreter without being licensed

pursuant to section 20-156 or exempt under this section shall, in addition to any other penalty provided by law, pay a civil penalty to the commission in an amount not to exceed five hundred dollars for each offense as determined by the commission. The civil penalty shall be assessed by the commission after a hearing is held in accordance with section 20-156 and shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) The civil penalty shall be paid within sixty days after the date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and executed in the same manner as any judgment from any court of record.

(c) The commission may investigate any actual, alleged, or suspected unlicensed activity.

(4) An unlicensed person or entity providing interpreting services is not in violation of the licensure requirements of this section if the person or entity is:

(a) Providing interpreting services as part of a religious service;

(b) Notwithstanding other state or federal laws or rules regarding emergency treatment, providing interpreting services, until the services of a licensed interpreter can be obtained if there is continued need for an interpreter, in an emergency situation involving health care in which the patient or his or her representative and a health care provider or health care professional agree that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the patient;

(c) Currently enrolled in a course of study leading to a certificate or degree in interpreting if such person is under the direct supervision of a licensed interpreter, engages only in activities and services that constitute a part of such course of study, and clearly designates himself or herself as a student, a trainee, or an intern;

(d) Working as an educational interpreter in compliance with rules and regulations adopted and promulgated by the State Department of Education or working for other purposes in a public school or an educational service unit;

(e) Holding either a certificate or a license as an interpreter in his or her state of residence which he or she has submitted to the commission for approval and either (i) providing interpreting services in Nebraska for a period of time not to exceed fourteen days in a calendar year or (ii) providing interpreting services by telecommunicating, or other use of technological means of communication; or

(f) Employed by or under contract with a person or an entity which is a licensed video remote interpreting provider in this state.

Source: Laws 2015, LB287, § 4.

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 agreed between the licensed interpreter and the contracting entity. 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; Laws 2015, LB287, § 5.

(k) MOTHER BREAST-FEED CHILD

20-170 Mother; right to breast-feed child; school; provide facilities or accommodation for milk expression and storage.

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, including, but not limited to, a mother who is attending a public, private, denominational, or parochial day school which meets the requirements for legal operation prescribed in Chapter 79. For a mother who is attending a public, private, denominational, or parochial day school which meets the requirement for legal operation prescribed in Chapter 79, the school shall also provide for private or appropriate facilities or accommodation for milk expression and storage. Nothing in this section limits the authority of administrative and teaching personnel to regulate student behavior as provided by section 79-258 or the authority of a private, denominational, or parochial school to regulate student behavior in order to further school purposes or to prevent interference with the educational process.

Source: Laws 2011, LB197, § 1; Laws 2017, LB427, § 5.

ARTICLE 5

RACIAL PROFILING

Section

20-501. Racial profiling; legislative intent.

20-502. Racial profiling prohibited.

20-504. Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; records maintained; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.

20-505. Forms authorized.

20-506. Racial Profiling Advisory Committee; created; members; duties.

20-501 Racial profiling; legislative intent.

Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. An individual who has been detained or whose vehicle has been stopped by the police for no reason other than the color of his or her skin or his or her apparent nationality or ethnicity is the victim of a discriminatory practice.

Source: Laws 2001, LB 593, § 1; Laws 2013, LB99, § 1.

20-502 Racial profiling prohibited.

(1) No member of the Nebraska State Patrol or a county sheriff's office, officer of a city or village police department, or member of any other law enforcement agency in this state shall engage in racial profiling. The disparate treatment of an individual who has been detained or whose motor vehicle has been stopped by a law enforcement officer is inconsistent with this policy.

(2) Racial profiling shall not be used to justify the detention of an individual or to conduct a motor vehicle stop.

Source: Laws 2001, LB 593, § 2; Laws 2013, LB99, § 2.

20-504 Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; records maintained; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.

(1) On or before January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt and provide a copy to the Nebraska Commission on Law Enforcement and Criminal Justice of a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated by racial profiling. Such racial profiling prevention policy shall include definitions consistent with section 20-503 and one or more internal methods of prevention and enforcement, including, but not limited to:

(a) Internal affairs investigation;

(b) Preventative measures including extra training at the Nebraska Law Enforcement Training Center focused on avoidance of apparent or actual racial profiling;

(c) Early intervention with any particular personnel determined by the administration of the agency to have committed, participated in, condoned, or attempted to cover up any instance of racial profiling; and

(d) Disciplinary measures or other formal or informal methods of prevention and enforcement.

None of the preventative or enforcement measures shall be implemented contrary to the collective-bargaining agreement provisions or personnel rules under which the member or officer in question is employed.

(2) The Nebraska Commission on Law Enforcement and Criminal Justice may develop and distribute a suggested model written racial profiling prevention policy for use by law enforcement agencies, but the commission shall not mandate the adoption of the model policy except for any particular law enforcement agency which fails to timely create and provide to the commission a policy for the agency in conformance with the minimum standards set forth in this section.

(3) With respect to a motor vehicle stop, on and after January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

(a) The number of motor vehicle stops;

(b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;

(c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;

(d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and

(e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

(4) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop shall be used, transmitted, or disclosed in violation of any collective-bargaining agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

(5) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

(6) On or before October 1, 2002, and annually thereafter, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the Nebraska Commission on Law Enforcement and Criminal Justice, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection (3) of this section.

(7) The Nebraska Commission on Law Enforcement and Criminal Justice shall, within the limits of its existing appropriations, including any grant funds which the commission is awarded for such purpose, provide for an annual review and analysis of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations of racial profiling involved in other detentions reported pursuant to this section. After the review and analysis, the commission may, when it deems warranted, inquire into and study individual law enforcement agency circumstances in which the raw data collected and analyzed raises at least some issue or appearance of possible racial profiling. The commission may make recommendations to any such law enforcement agency for the purpose of improving measures to prevent racial profiling or the appearance of racial profiling. The results of such review, analysis, inquiry, and study and any recommendations by the commission to any law enforcement agency shall be reported annually to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically.

(8) Any law enforcement officer, prosecutor, defense attorney, or probation officer, unless restricted by privilege, who becomes aware of incidents of racial profiling by a law enforcement agency, shall report such incidents to the Nebraska Commission on Law Enforcement and Criminal Justice within thirty days after becoming aware of such practice.

Source: Laws 2001, LB 593, § 4; Laws 2004, LB 1162, § 2; Laws 2006, LB 1113, § 19; Laws 2010, LB746, § 1; Laws 2012, LB782, § 21; Laws 2013, LB99, § 3.

20-505 Forms authorized.

On or before January 1, 2002, the Nebraska Commission on Law Enforcement and Criminal Justice, the Superintendent of Law Enforcement and Public Safety, the Attorney General, and the State Court Administrator may adopt and promulgate (1) a form, in printed or electronic format, to be used by a law enforcement officer when making a motor vehicle stop to record personal identifying information about the operator of such motor vehicle, the location of the stop, the reason for the stop, and any other information that is required to be recorded pursuant to subsection (3) of section 20-504 and (2) a form, in printed or electronic format, to be used to report an allegation of racial profiling by a law enforcement officer.

Source: Laws 2001, LB 593, § 5; Laws 2013, LB99, § 4.

20-506 Racial Profiling Advisory Committee; created; members; duties.

(1) The Racial Profiling Advisory Committee is created.

(2)(a) The committee shall consist of:

(i) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee;

(ii) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(iii) The director of the Commission on Latino-Americans or his or her designee; and

(iv) The executive director of the Commission on Indian Affairs or his or her designee.

(b) The committee shall also consist of the following persons, each appointed by the Governor from a list of five names submitted to the Governor for each position:

(i) A representative of the Fraternal Order of Police;

(ii) A representative of the Nebraska County Sheriffs Association;

(iii) A representative of the Police Officers Association of Nebraska;

(iv) A representative of the American Civil Liberties Union of Nebraska;

(v) A representative of the AFL-CIO;

(vi) A representative of the Police Chiefs Association of Nebraska;

(vii) A representative of the Nebraska branches of the National Association for the Advancement of Colored People; and

(viii) A representative of the Nebraska State Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet semiannually at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the commission and its executive director in the conduct of their duties regarding (a) the completeness and acceptability of written racial profiling prevention policies submitted by individual law enforcement agencies as required by subsection (1) of section 20-504, (b) the collection of data by law enforcement agencies, any needed additional data, and any

needed additional analysis, investigation, or inquiry as to the data provided pursuant to subsection (3) of section 20-504, (c) the review, analysis, inquiry, study, and recommendations required pursuant to subsection (7) of section 20-504, including an analysis of the review, analysis, inquiry, study, and recommendations, and (d) policy recommendations with respect to the prevention of racial profiling and the need, if any, for enforcement by the Department of Justice of the prohibitions found in section 20-502.

Source: Laws 2004, LB 1162, § 5; Laws 2010, LB746, § 2; Laws 2013, LB99, § 5.

CHAPTER 21

CORPORATIONS AND OTHER COMPANIES

Article.

1. Nebraska Uniform Limited Liability Company Act.
 - (a) General Provisions. 21-101 to 21-114.
 - (b) Formation; Certificate of Organization and Other Filings. 21-125.
 - (g) Dissolution and Winding Up. 21-152.
 - (l) Fees. 21-192.
2. Nebraska Model Business Corporation Act.
 - Part 1—General Provisions.
 - Subpart 1—Short Title and Reservation of Power. 21-201, 21-202.
 - Subpart 2—Filing Documents. 21-203 to 21-212.
 - Subpart 3—Secretary of State. 21-213.
 - Subpart 4—Definitions. 21-214 to 21-218.
 - Part 2—Incorporation. 21-219 to 21-225.
 - Part 3—Purposes and Powers. 21-226 to 21-229.
 - Part 4—Name. 21-230 to 21-232.
 - Part 5—Office and Agent. 21-233 to 21-236.
 - Part 6—Shares and Distributions.
 - Subpart 1—Shares. 21-237 to 21-240.
 - Subpart 2—Issuance of Shares. 21-241 to 21-249.
 - Subpart 3—Subsequent Acquisition of Shares by Shareholders and Corporation. 21-250, 21-251.
 - Subpart 4—Distributions. 21-252.
 - Part 7—Shareholders.
 - Subpart 1—Meetings. 21-253 to 21-261.
 - Subpart 2—Voting. 21-262 to 21-271.01.
 - Subpart 3—Voting Trusts and Agreements. 21-272 to 21-274.
 - Subpart 4—Derivative Proceedings. 21-275 to 21-282.
 - Subpart 5—Proceeding to Appoint Custodian or Receiver. 21-283.
 - Part 8—Directors and Officers.
 - Subpart 1—Board of Directors. 21-284 to 21-294.
 - Subpart 2—Meetings and Action of the Board. 21-295 to 21-2,101.
 - Subpart 3—Directors. 21-2,102 to 21-2,104.
 - Subpart 4—Officers. 21-2,105 to 21-2,109.
 - Subpart 5—Indemnification and Advance for Expenses. 21-2,110 to 21-2,119.
 - Subpart 6—Directors’ Conflicting Interest Transactions. 21-2,120 to 21-2,123.
 - Subpart 7—Business Opportunities. 21-2,124.
 - Part 9—Domestication and Conversion.
 - Subpart 1—Preliminary Provisions. 21-2,125, 21-2,126.
 - Subpart 2—Domestication. 21-2,127 to 21-2,132.
 - Subpart 3—Nonprofit Conversion. 21-2,133 to 21-2,138.
 - Subpart 4—Foreign Nonprofit Domestication and Conversion. 21-2,139 to 21-2,142.
 - Subpart 5—Entity Conversion. 21-2,143 to 21-2,149.
 - Part 10—Amendment of Articles of Incorporation and Bylaws.
 - Subpart 1—Amendment of Articles of Incorporation. 21-2,150 to 21-2,158.
 - Subpart 2—Amendment of Bylaws. 21-2,159, 21-2,160.
 - Part 11—Mergers and Share Exchanges. 21-2,161 to 21-2,168.
 - Part 12—Disposition of Assets. 21-2,169, 21-2,170.
 - Part 13—Appraisal Rights.
 - Subpart 1—Right to Appraisal and Payment for Shares. 21-2,171 to 21-2,173.

CORPORATIONS AND OTHER COMPANIES

Article.

- Subpart 2—Procedure for Exercise of Appraisal Rights. 21-2,174 to 21-2,180.
- Subpart 3—Judicial Appraisal of Shares. 21-2,181, 21-2,182.
- Subpart 4—Other Remedies. 21-2,183.
- Part 14—Dissolution.
 - Subpart 1—Voluntary Dissolution. 21-2,184 to 21-2,192.
 - Subpart 2—Administrative Dissolution. 21-2,193 to 21-2,196.
 - Subpart 3—Judicial Dissolution. 21-2,197 to 21-2,201.
 - Subpart 4—Miscellaneous. 21-2,202.
- Part 15—Foreign Corporations.
 - Subpart 1—Certificate of Authority. 21-2,203 to 21-2,212.
 - Subpart 2—Withdrawal or Transfer of Authority. 21-2,213 to 21-2,216.
 - Subpart 3—Revocation of Certificate of Authority. 21-2,217 to 21-2,220.
 - Subpart 4—Foreign Corporation Domestication. 21-2,220.01 to 21-2,220.04.
- Part 16—Records and Reports.
 - Subpart 1—Records. 21-2,221 to 21-2,226.
 - Subpart 2—Reports. 21-2,227 to 21-2,229.
- Part 17—Transition Provisions. 21-2,230 to 21-2,232.
- 3. Occupation Tax. 21-301 to 21-330.
- 4. Nebraska Benefit Corporation Act. 21-401 to 21-414.
- 5. Nebraska Uniform Protected Series Act.
 - (a) General Provisions. 21-501 to 21-508.
 - (b) Establishing Protected Series. 21-509 to 21-514.
 - (c) Associated Asset; Associated Member; Protected-Series Transferable Interest; Management; Right of Information. 21-515 to 21-519.
 - (d) Limitation on Liability and Enforcement of Claims. 21-520 to 21-523.
 - (e) Dissolution and Winding Up of Protected Series. 21-524 to 21-526.
 - (f) Entity Transactions Restricted. 21-527 to 21-534.
 - (g) Foreign Protected Series. 21-535 to 21-538.
 - (h) Miscellaneous Provisions. 21-539 to 21-542.
- 6. Charitable and Fraternal Societies. 21-610.
- 13. Cooperative Companies.
 - (a) General Provisions. 21-1301.
- 17. Credit Unions.
 - (a) Credit Union Act. 21-1701 to 21-17,116.
- 19. Nebraska Nonprofit Corporation Act.
 - (a) General Provisions. 21-1905.
 - (d) Names. 21-1931, 21-1933.
 - (m) Dissolution. 21-19,139.
 - (n) Foreign Corporations. 21-19,151 to 21-19,163.
 - (o) Records and Reports. 21-19,172.
- 20. Business Corporation Act.
 - (a) General Provisions. 21-2001 to 21-2016. Repealed.
 - (b) Incorporation. 21-2017 to 21-2023. Repealed.
 - (c) Purposes and Powers. 21-2024 to 21-2027. Repealed.
 - (d) Name. 21-2028 to 21-2030. Repealed.
 - (e) Office and Agent. 21-2031 to 21-2034. Repealed.
 - (f) Shares and Distributions. 21-2035 to 21-2050. Repealed.
 - (g) Shareholders. 21-2051 to 21-2077. Repealed.
 - (h) Directors and Officers. 21-2078 to 21-20,115. Repealed.
 - (i) Amendment of Articles of Incorporation and Bylaws. 21-20,116 to 21-20,127. Repealed.
 - (j) Merger and Share Exchange. 21-20,128 to 21-20,134. Repealed.
 - (k) Sale of Assets. 21-20,135 to 21-20,136. Repealed.
 - (l) Dissenters' Rights. 21-20,137 to 21-20,150. Repealed.
 - (m) Dissolution. 21-20,151 to 21-20,167. Repealed.
 - (n) Foreign Corporations. 21-20,168 to 21-20,181.03. Repealed.
 - (o) Records and Reports. 21-20,182 to 21-20,188. Repealed.
 - (p) Publication. 21-20,189. Repealed.
 - (q) Transition Provisions. 21-20,190 to 21-20,193. Repealed.

Article.

- (r) Conversion. 21-20,194 to 21-20,197. Repealed.
- 21. Nebraska Business Development Corporation Act. 21-2103 to 21-2115.
- 22. Professional Corporations. 21-2203 to 21-2212.
- 24. Shareholders Protection Act. 21-2439.
- 26. Limited Liability Companies. Repealed.
- 29. Nebraska Limited Cooperative Association Act.
 - Part 2—Filing and Reports. 21-2923.
 - Part 7—Directors and Officers. 21-2971.
 - Part 8—Indemnification. 21-2976.
 - Part 11—Dissolution. 21-2995.

ARTICLE 1

NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

(a) GENERAL PROVISIONS

Section

- 21-101. Act, how cited.
- 21-104. Nature, purpose and duration of limited liability company; classification for tax purposes.
- 21-114. Change of designated office or agent for service of process; change of address.

(b) FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

- 21-125. Biennial report.

(g) DISSOLUTION AND WINDING UP

- 21-152. Reinstatement following administrative dissolution.

(l) FEES

- 21-192. Fees.

(a) GENERAL PROVISIONS

21-101 Act, how cited.

(RULLCA 101) Sections 21-101 to 21-197 and 21-501 to 21-542 shall be known and may be cited as the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 1; Laws 2018, LB1121, § 1.
Operative date January 1, 2021.

21-104 Nature, purpose and duration of limited liability company; classification for tax purposes.

(RULLCA 104) (a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, except that a limited liability company may not operate as an insurer as defined in section 44-103.

(c) A limited liability company has perpetual duration.

(d) A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Source: Laws 2010, LB888, § 4; Laws 2016, LB758, § 1.

21-114 Change of designated office or agent for service of process; change of address.

(RULLCA 114) (a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary of State for filing a statement of change containing:

- (1) the name of the company;
- (2) the street and mailing addresses of its current designated office;
- (3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
- (4) the name and street and mailing addresses and post office box number, if any, of its current agent for service of process; and
- (5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to subsection (c) of section 21-121, a statement of change is effective when filed by the Secretary of State.

(c) An agent for service of process may change the agent's street and mailing addresses and post office box number, if any, for any limited liability company or foreign limited liability company for which the agent is designated by notifying the limited liability company or foreign limited liability company in writing of the change containing the new information, and by delivering to the Secretary of State for filing a statement of change of address for an agent for service of process which complies with the requirements of subdivisions (a)(1), (4), and (5) of this section and states that the limited liability company or foreign limited liability company has been notified of the change.

Source: Laws 2010, LB888, § 14; Laws 2014, LB753, § 1.

(b) FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

21-125 Biennial report.

(RULLCA 209) (a) Each odd-numbered year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

- (1) the name of the company;
- (2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses and post office box number, if any, of its agent for service of process in this state;
- (3) the street and mailing addresses of its principal office; and
- (4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under subsection (a) of section 21-159.

(b) Information in a biennial report under this section must be current as of the date the report is delivered to the Secretary of State for filing.

(c) The first biennial report under this section must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Secretary of State between January 1 and April 1 of each subsequent odd-numbered calendar year.

(d) If a biennial report under this section does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(e) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 2010, LB888, § 25; Laws 2014, LB774, § 2.

(g) DISSOLUTION AND WINDING UP

21-152 Reinstatement following administrative dissolution.

(RULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its dissolution. The application must be delivered to the Secretary of State for filing and state:

- (1) the name of the company and the effective date of its dissolution;
- (2) that the grounds for dissolution did not exist or have been eliminated; and
- (3) that the company's name satisfies the requirements of section 21-108.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) A limited liability company that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement. The application must be delivered to the Secretary of State for filing, along with the fee set forth in section 21-192, and state:

- (1) The name of the company and the effective date of its dissolution;
- (2) That the grounds for dissolution did not exist or have been eliminated;
- (3) That the company's name satisfies the requirements of section 21-108;
- (4) That a legitimate reason exists for reinstatement and what such legitimate reason is; and
- (5) That such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that an application under subsection (c) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(e) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Source: Laws 2010, LB888, § 52; Laws 2012, LB854, § 1; Laws 2015, LB279, § 1.

(l) FEES

21-192 Fees.

(1) The filing fee for all filings under the Nebraska Uniform Limited Liability Company Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization under section 21-117 and for filing an application for a certificate of authority to transact business in this state as a foreign limited liability company under section 21-156 shall be one hundred dollars plus such recording fees and ten dollars for a certificate. The filing fee for filing a statement of change of address for an agent for service of process shall be ten dollars for each limited liability company or foreign limited liability company for which the agent is designated plus the recording fees set forth in subdivision (4) of section 33-101. There shall be no recording fee collected for the filing of a biennial report required by section 21-125 or any corrections or amendments thereto.

(2) The fee for an application for reinstatement more than five years after the effective date of an administrative dissolution shall be five hundred dollars.

(3) A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file under the act.

(4) The fees for filings under the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Source: Laws 2010, LB888, § 92; Laws 2014, LB753, § 2; Laws 2015, LB279, § 2.

ARTICLE 2

NEBRASKA MODEL BUSINESS CORPORATION ACT

Note: The Nebraska Model Business Corporation Act was adopted in 2014 by LB749. The operative date provided by LB 749 was January 1, 2016. The operative date was changed by Laws 2015, LB 157, section 10, to January 1, 2017.

PART 1—GENERAL PROVISIONS

SUBPART 1—SHORT TITLE AND RESERVATION OF POWER

- Section 21-201. Short title.
- 21-202. Reservation of power to amend or repeal.

SUBPART 2—FILING DOCUMENTS

- 21-203. Requirements for documents; extrinsic facts.
- 21-204. Forms.
- 21-205. Filing, service, and copying fees.
- 21-206. Effective time and date of document.
- 21-207. Correcting filed document.
- 21-208. Filing duty of Secretary of State.
- 21-209. Appeal from Secretary of State’s refusal to file document.
- 21-210. Evidentiary effect of copy of filed document.
- 21-211. Certificate of existence.
- 21-212. Penalty for signing false document.

SUBPART 3—SECRETARY OF STATE

- 21-213. Powers.

SUBPART 4—DEFINITIONS

- 21-214. Act definitions.

NEBRASKA MODEL BUSINESS CORPORATION ACT

- Section
21-215. Notices and other communications.
21-216. Number of shareholders.
21-217. Qualified director.
21-218. Householding.

PART 2—INCORPORATION

- 21-219. Incorporators.
21-220. Articles of incorporation.
21-221. Incorporation.
21-222. Liability for preincorporation transactions.
21-223. Organization of corporation.
21-224. Bylaws.
21-225. Emergency bylaws.

PART 3—PURPOSES AND POWERS

- 21-226. Purposes.
21-227. General powers.
21-228. Emergency powers.
21-229. Ultra vires.

PART 4—NAME

- 21-230. Corporate name.
21-231. Reserved name.
21-232. Registered name.

PART 5—OFFICE AND AGENT

- 21-233. Registered office and registered agent.
21-234. Change of registered office or registered agent.
21-235. Resignation of registered agent.
21-236. Service on corporation.

PART 6—SHARES AND DISTRIBUTIONS

SUBPART 1—SHARES

- 21-237. Authorized shares.
21-238. Terms of class or series determined by board of directors.
21-239. Issued and outstanding shares.
21-240. Fractional shares.

SUBPART 2—ISSUANCE OF SHARES

- 21-241. Subscription for shares before incorporation.
21-242. Issuance of shares.
21-243. Liability of shareholders.
21-244. Share dividends.
21-245. Share options and other awards.
21-246. Form and content of certificates.
21-247. Shares without certificates.
21-248. Restriction on transfer of shares and other securities.
21-249. Expense of issue.

SUBPART 3—SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

- 21-250. Shareholders' preemptive rights.
21-251. Corporation's acquisition of its own shares.

SUBPART 4—DISTRIBUTIONS

- 21-252. Distributions to shareholders.

PART 7—SHAREHOLDERS

SUBPART 1—MEETINGS

- 21-253. Annual meeting.
21-254. Special meeting.
21-255. Court-ordered meeting.

CORPORATIONS AND OTHER COMPANIES

- Section
21-256. Action without meeting.
21-257. Notice of meeting.
21-258. Waiver of notice.
21-259. Record date.
21-260. Conduct of the meeting.
21-261. Remote participation in annual and special meetings.

SUBPART 2—VOTING

- 21-262. Shareholders' list for meeting.
21-263. Voting entitlement of shares.
21-264. Proxies.
21-265. Shares held by intermediaries and nominees.
21-266. Corporation's acceptance of votes.
21-267. Quorum and voting requirements for voting groups.
21-268. Action by single and multiple voting groups.
21-269. Greater quorum or voting requirements.
21-270. Voting for directors; cumulative voting.
21-271. Inspectors of election.
21-271.01. Judicial review of corporate elections, shareholder votes, and other corporate governance disputes.

SUBPART 3—VOTING TRUSTS AND AGREEMENTS

- 21-272. Voting trusts.
21-273. Voting agreements.
21-274. Shareholder agreements.

SUBPART 4—DERIVATIVE PROCEEDINGS

- 21-275. Subpart definitions.
21-276. Standing.
21-277. Demand.
21-278. Stay of proceedings.
21-279. Dismissal.
21-280. Discontinuance or settlement.
21-281. Payment of expenses.
21-282. Applicability to foreign corporations.

SUBPART 5—PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER

- 21-283. Shareholder action to appoint custodian or receiver.

PART 8—DIRECTORS AND OFFICERS

SUBPART 1—BOARD OF DIRECTORS

- 21-284. Requirement for and functions of board of directors.
21-285. Qualifications of directors.
21-286. Number and election of directors.
21-287. Election of directors by certain classes of shareholders.
21-288. Terms of directors generally.
21-289. Staggered terms for directors.
21-290. Resignation of directors.
21-291. Removal of directors by shareholders.
21-292. Removal of directors by judicial proceeding.
21-293. Vacancy on board.
21-294. Compensation of directors.

SUBPART 2—MEETINGS AND ACTION OF THE BOARD

- 21-295. Meetings.
21-296. Action without meeting.
21-297. Notice of meeting.
21-298. Waiver of notice.
21-299. Quorum and voting.
21-2,100. Committees.
21-2,101. Submission of matters for shareholder vote.

NEBRASKA MODEL BUSINESS CORPORATION ACT

Section

SUBPART 3—DIRECTORS

- 21-2,102. Standards of conduct for directors.
- 21-2,103. Standards of liability for directors.
- 21-2,104. Directors' liability for unlawful distributions.

SUBPART 4—OFFICERS

- 21-2,105. Officers.
- 21-2,106. Functions of officers.
- 21-2,107. Standards of conduct for officers.
- 21-2,108. Resignation and removal of officers.
- 21-2,109. Contract rights of officers.

SUBPART 5—INDEMNIFICATION AND ADVANCE FOR EXPENSES

- 21-2,110. Subpart definitions.
- 21-2,111. Permissible indemnification.
- 21-2,112. Mandatory indemnification.
- 21-2,113. Advance for expenses.
- 21-2,114. Court-ordered indemnification and advance for expenses.
- 21-2,115. Determination and authorization of indemnification.
- 21-2,116. Indemnification of officers.
- 21-2,117. Insurance.
- 21-2,118. Variation by corporate action; application of subchapter.
- 21-2,119. Exclusivity of subpart.

SUBPART 6—DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

- 21-2,120. Subpart definitions.
- 21-2,121. Judicial action.
- 21-2,122. Directors' action.
- 21-2,123. Shareholders' action.

SUBPART 7—BUSINESS OPPORTUNITIES

- 21-2,124. Business opportunities.

PART 9—DOMESTICATION AND CONVERSION

SUBPART 1—PRELIMINARY PROVISIONS

- 21-2,125. Excluded transactions.
- 21-2,126. Required approvals.

SUBPART 2—DOMESTICATION

- 21-2,127. Domestication.
- 21-2,128. Action on a plan of domestication.
- 21-2,129. Articles of domestication.
- 21-2,130. Surrender of charter upon domestication.
- 21-2,131. Effect of domestication.
- 21-2,132. Abandonment of a domestication.

SUBPART 3—NONPROFIT CONVERSION

- 21-2,133. Nonprofit conversion.
- 21-2,134. Action on a plan of nonprofit conversion.
- 21-2,135. Articles of nonprofit conversion.
- 21-2,136. Surrender of charter upon foreign nonprofit conversion.
- 21-2,137. Effect of nonprofit conversion.
- 21-2,138. Abandonment of a nonprofit conversion.

SUBPART 4—FOREIGN NONPROFIT DOMESTICATION AND CONVERSION

- 21-2,139. Foreign nonprofit domestication and conversion.
- 21-2,140. Articles of domestication and conversion.
- 21-2,141. Effect of foreign nonprofit domestication and conversion.
- 21-2,142. Abandonment of a foreign nonprofit domestication and conversion.

SUBPART 5—ENTITY CONVERSION

- 21-2,143. Entity conversion authorized; definitions.

CORPORATIONS AND OTHER COMPANIES

- Section
21-2,144. Plan of entity conversion.
21-2,145. Action on a plan of entity conversion.
21-2,146. Articles of entity conversion.
21-2,147. Surrender of charter upon conversion.
21-2,148. Effect of entity conversion.
21-2,149. Abandonment of an entity conversion.

PART 10—AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SUBPART 1—AMENDMENT OF ARTICLES OF INCORPORATION

- 21-2,150. Authority to amend.
21-2,151. Amendment before issuance of shares.
21-2,152. Amendment by board of directors and shareholders.
21-2,153. Voting on amendments by voting groups.
21-2,154. Amendment by board of directors.
21-2,155. Articles of amendment.
21-2,156. Restated articles of incorporation.
21-2,157. Amendment pursuant to reorganization.
21-2,158. Effect of amendment.

SUBPART 2—AMENDMENT OF BYLAWS

- 21-2,159. Amendment by board of directors or shareholders.
21-2,160. Bylaw increasing quorum or voting requirement for directors.

PART 11—MERGERS AND SHARE EXCHANGES

- 21-2,161. Definitions.
21-2,162. Merger.
21-2,163. Share exchange.
21-2,164. Action on a plan of merger or share exchange.
21-2,165. Merger between parent and subsidiary or between subsidiaries.
21-2,166. Articles of merger or share exchange.
21-2,167. Effect of merger or share exchange.
21-2,168. Abandonment of a merger or share exchange.

PART 12—DISPOSITION OF ASSETS

- 21-2,169. Disposition of assets not requiring shareholder approval.
21-2,170. Shareholder approval of certain dispositions.

PART 13—APPRAISAL RIGHTS

SUBPART 1—RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

- 21-2,171. Definitions.
21-2,172. Right to appraisal.
21-2,173. Assertion of rights by nominees and beneficial owners.

SUBPART 2—PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

- 21-2,174. Notice of appraisal rights.
21-2,175. Notice of intent to demand payment and consequences of voting or consenting.
21-2,176. Appraisal notice and form.
21-2,177. Perfection of rights; right to withdraw.
21-2,178. Payment.
21-2,179. After-acquired shares.
21-2,180. Procedure if shareholder dissatisfied with payment or offer.

SUBPART 3—JUDICIAL APPRAISAL OF SHARES

- 21-2,181. Court action.
21-2,182. Court costs and expenses.

SUBPART 4—OTHER REMEDIES

- 21-2,183. Other remedies limited.

NEBRASKA MODEL BUSINESS CORPORATION ACT

Section

PART 14—DISSOLUTION

SUBPART 1—VOLUNTARY DISSOLUTION

- 21-2,184. Dissolution by incorporators or initial directors.
- 21-2,185. Dissolution by board of directors and shareholders.
- 21-2,186. Articles of dissolution.
- 21-2,187. Revocation of dissolution.
- 21-2,188. Effect of dissolution.
- 21-2,189. Known claims against dissolved corporation.
- 21-2,190. Other claims against dissolved corporation.
- 21-2,191. Court proceedings.
- 21-2,192. Director duties.

SUBPART 2—ADMINISTRATIVE DISSOLUTION

- 21-2,193. Grounds for administrative dissolution.
- 21-2,194. Procedure for and effect of administrative dissolution.
- 21-2,195. Reinstatement following administrative dissolution.
- 21-2,196. Appeal from denial of reinstatement.

SUBPART 3—JUDICIAL DISSOLUTION

- 21-2,197. Grounds for judicial dissolution.
- 21-2,198. Procedure for judicial dissolution.
- 21-2,199. Receivership or custodianship.
- 21-2,200. Decree of dissolution.
- 21-2,201. Election to purchase in lieu of dissolution.

SUBPART 4—MISCELLANEOUS

- 21-2,202. Deposit with State Treasurer.

PART 15—FOREIGN CORPORATIONS

SUBPART 1—CERTIFICATE OF AUTHORITY

- 21-2,203. Authority to transact business required.
- 21-2,204. Consequences of transacting business without authority.
- 21-2,205. Application for certificate of authority.
- 21-2,206. Amended certificate of authority.
- 21-2,207. Effect of certificate of authority.
- 21-2,208. Corporate name of foreign corporation.
- 21-2,209. Registered office and registered agent of foreign corporation.
- 21-2,210. Change of registered office or registered agent of foreign corporation.
- 21-2,211. Resignation of registered agent of foreign corporation.
- 21-2,212. Service on foreign corporation.

SUBPART 2—WITHDRAWAL OR TRANSFER OF AUTHORITY

- 21-2,213. Withdrawal of foreign corporation.
- 21-2,214. Automatic withdrawal upon certain conversions.
- 21-2,215. Withdrawal upon conversion to a nonfiling entity.
- 21-2,216. Transfer of authority.

SUBPART 3—REVOCATION OF CERTIFICATE OF AUTHORITY

- 21-2,217. Grounds for revocation.
- 21-2,218. Procedure for and effect of revocation.
- 21-2,219. Foreign corporation; reinstatement.
- 21-2,220. Appeal from revocation.

SUBPART 4—FOREIGN CORPORATION DOMESTICATION

- 21-2,220.01. Foreign corporation; domestication; procedure.
- 21-2,220.02. Foreign corporation; cessation of domestication.
- 21-2,220.03. Foreign corporation; surrender of foreign charter; effect.
- 21-2,220.04. Foreign corporation; domesticated under prior law; status.

Section

PART 16—RECORDS AND REPORTS

SUBPART 1—RECORDS

- 21-2,221. Corporate records.
- 21-2,222. Inspection of records by shareholders.
- 21-2,223. Scope of inspection right.
- 21-2,224. Court-ordered inspection.
- 21-2,225. Inspection of records by directors.
- 21-2,226. Exception to notice requirements.

SUBPART 2—REPORTS

- 21-2,227. Financial statements for shareholders.
- 21-2,228. Biennial report for Secretary of State.
- 21-2,229. Notice of incorporation, amendment, merger, or share exchange; notice of dissolution.

PART 17—TRANSITION PROVISIONS

- 21-2,230. Application to existing domestic corporations.
- 21-2,231. Application to qualified foreign corporations.
- 21-2,232. Saving provisions.

PART 1—GENERAL PROVISIONS

SUBPART 1—SHORT TITLE AND RESERVATION OF POWER

21-201 Short title.

(MBCA 1.01) Sections 21-201 to 21-2,232 shall be known and may be cited as the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 1; Laws 2016, LB794, § 1; Laws 2017, LB35, § 1.

21-202 Reservation of power to amend or repeal.

(MBCA 1.02) The Legislature has power to amend or repeal all or part of the Nebraska Model Business Corporation Act at any time and all domestic and foreign corporations subject to the act are governed by the amendment or repeal.

Source: Laws 2014, LB749, § 2.

SUBPART 2—FILING DOCUMENTS

21-203 Requirements for documents; extrinsic facts.

(MBCA 1.20) (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) The Nebraska Model Business Corporation Act must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by the act. It may contain other information as well.

(d) The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals,

and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be signed:

(1) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

(h) If the Secretary of State has prescribed a mandatory form for the document under section 21-204, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one exact or conformed copy to be delivered with the document, except as provided in sections 21-235 and 21-2,211.

(j) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, and any tax, license fee, or penalty required to be paid therewith by the Nebraska Model Business Corporation Act or other law must be paid or provision for payment made in a manner permitted by the Secretary of State.

(k) Whenever a provision of the Nebraska Model Business Corporation Act permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;

(2) The facts may include, but are not limited to:

(i) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

(3) As used in this subsection (k):

(i) Filed document means a document filed with the Secretary of State under any provision of the act except sections 21-2,203 to 21-2,220 or section 21-2,228; and

(ii) Plan means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange;

(4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document;

(ii) The registered office of any entity required in a filed document;

(iii) The registered agent of any entity required in a filed document;

(iv) The number of authorized shares and designation of each class or series of shares;

(v) The effective date of a filed document; or

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subdivision (k)(2)(i) of this section or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision (k)(5) of this section are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

Source: Laws 2014, LB749, § 3.

21-204 Forms.

(MBCA 1.21) (a) The Secretary of State may prescribe and furnish on request forms for (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, and (3) a foreign corporation's application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by the Nebraska Model Business Corporation Act but their use is not mandatory.

Source: Laws 2014, LB749, § 4.

21-205 Filing, service, and copying fees.

(MBCA 1.22) (a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

(1) Articles of incorporation, articles of domestication, or articles of domestication and conversion:

(i) If the capital stock is \$10,000 or less, the fee shall be \$60;

(ii) If the capital stock is more than \$10,000 but does not exceed \$25,000, the fee shall be \$100;

(iii) If the capital stock is more than \$25,000 but does not exceed \$50,000, the fee shall be \$150;

(iv) If the capital stock is more than \$50,000 but does not exceed \$75,000, the fee shall be \$225;

(v) If the capital stock is more than \$75,000 but does not exceed \$100,000, the fee shall be \$300; and

(vi) If the capital stock is more than \$100,000, the fee shall be \$300, plus \$3 additional for each \$1,000 in excess of \$100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share;

(2) Articles of incorporation or articles of domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be \$300;

(3) Application for use of deceptively similar name . . . \$25;

(4) Application for reserved name . . . \$25;

(5) Notice of transfer of reserved name . . . \$25;

(6) Application for registered name . . . \$25;

(7) Application for renewal of registered name . . . \$25;

(8) Corporation's statement of change of registered agent or registered office or both . . . \$25;

(9) Agent's statement of change of registered office for each affected corporation . . . \$25 not to exceed a total of . . . \$1,000;

(10) Agent's statement of resignation . . . No fee;

(11) Articles of charter surrender . . . \$25;

(12) Articles of nonprofit conversion . . . \$25;

(13) Articles of entity conversion . . . \$25;

(14) Amendment of articles of incorporation . . . \$25;

(15) Restatement of articles of incorporation . . . \$25

with amendment of articles . . . \$25;

(16) Articles of merger or share exchange . . . \$25;

(17) Articles of dissolution . . . \$45;

(18) Articles of revocation of dissolution . . . \$25;

(19) Certificate of administrative dissolution . . . No fee;

(20) Application for reinstatement following administrative dissolution or revocation . . . \$25;

(21) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation . . . \$500;

(22) Certificate of reinstatement . . . No fee;

(23) Certificate of judicial dissolution . . . No fee;

(24) Application for certificate of authority . . . \$130;

- (25) Application for amended certificate of authority . . . \$25;
- (26) Application for certificate of withdrawal . . . \$25;
- (27) Application for transfer of authority . . . \$25;
- (28) Certificate of revocation of authority to transact business . . . No fee;
- (29) Articles of correction . . . \$25;
- (30) Application for certificate of existence or authorization . . . \$25; and
- (31) Any other document required or permitted to be filed by the Nebraska Model Business Corporation Act . . . \$25.

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) One dollar per page for copying; and
- (2) Ten dollars for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 2014, LB749, § 5; Laws 2015, LB279, § 3.

21-206 Effective time and date of document.

(MBCA 1.23) (a) Except as provided in subsection (b) of this section and subsection (c) of section 21-207, a document accepted for filing is effective:

(1) At the date and time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

Source: Laws 2014, LB749, § 6.

21-207 Correcting filed document.

(MBCA 1.24) (a) A domestic or foreign corporation may correct a document filed with the Secretary of State if (1) the document contains an inaccuracy, or (2) the document was defectively signed, attested, sealed, verified, or acknowledged, or (3) the electronic transmission was defective.

(b) A document is corrected:

(1) By preparing articles of correction that:

(i) Describe the document, including its filing date, or attach a copy of it to the articles;

(ii) Specify the inaccuracy or defect to be corrected; and

(iii) Correct the inaccuracy or defect; and

(2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Source: Laws 2014, LB749, § 7.

21-208 Filing duty of Secretary of State.

(MBCA 1.25) (a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of section 21-203, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and at the time of receipt. After filing a document, except as provided in sections 21-235 and 21-2,211, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, it shall be returned to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. The Secretary of State's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Source: Laws 2014, LB749, § 8.

21-209 Appeal from Secretary of State's refusal to file document.

(MBCA 1.26) (a) If the Secretary of State refuses to file a document delivered for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the district court of Lancaster County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his or her refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 9.

21-210 Evidentiary effect of copy of filed document.

(MBCA 1.27) A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State, is conclusive evidence that the original document is on file with the Secretary of State.

Source: Laws 2014, LB749, § 10.

21-211 Certificate of existence.

(MBCA 1.28) (a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That:

(i) The domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) That the foreign corporation is authorized to transact business in this state;

(3) That all fees, taxes, and penalties owed to this state have been paid, if:

(i) Payment is reflected in the records of the Secretary of State; and

(ii) Nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) That its most recent biennial report required by section 21-2,228 has been filed with the Secretary of State;

(5) That articles of dissolution have not been filed; and

(6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Source: Laws 2014, LB749, § 11.

21-212 Penalty for signing false document.

(MBCA 1.29) (a) A person commits an offense by signing a document that the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class I misdemeanor.

Source: Laws 2014, LB749, § 12.

SUBPART 3—SECRETARY OF STATE

21-213 Powers.

(MBCA 1.30) The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 13.

SUBPART 4—DEFINITIONS

21-214 Act definitions.

(MBCA 1.40) In the Nebraska Model Business Corporation Act:

(1) Articles of incorporation means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Secretary of State under any provision of the act except section 21-2,228. If an amendment of the articles or any other document filed under the act restates the articles in their entirety, thenceforth the articles shall not include any prior documents.

(2) Authorized shares means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) Beneficial shareholder means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) Conspicuous means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined, is conspicuous.

(5) Corporation, domestic corporation, or domestic business corporation means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act.

(6) Deliver or delivery means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with section 21-215, by electronic transmission.

(7) Distribution means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(8) Document means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

(9) Domestic unincorporated entity means an unincorporated entity whose internal affairs are governed by the laws of this state.

(10) Effective date of notice is defined in section 21-215.

(11) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) Electronic record means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(13) Electronic transmission or electronically transmitted means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which (i) is suitable for the retention, retrieval, and reproduction of information by the recipient and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(14) Eligible entity means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) Eligible interests means interests or memberships.

(16) Employee includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) Entity includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; limited liability company; estate; trust; domestic and foreign unincorporated entity; and state, United States, and foreign government.

(18) The phrase facts objectively ascertainable outside of a filed document or plan is defined in subsection (k) of section 21-203.

(19) Expenses means reasonable expenses of any kind that are incurred in connection with a matter.

(20) Filing entity means an unincorporated entity that is of a type that is created by filing a public organic document.

(21) Foreign corporation means a corporation incorporated under a law other than the law of this state which would be a business corporation if incorporated under the laws of this state.

(22) Foreign nonprofit corporation means a corporation incorporated under a law other than the law of this state which would be a nonprofit corporation if incorporated under the laws of this state.

(23) Foreign unincorporated entity means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(24) Governmental subdivision includes authority, county, district, and municipality.

(25) Includes denotes a partial definition.

(26) Individual means a natural person.

(27) Interest means either or both of the following rights under the organic law of an unincorporated entity:

(i) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(28) Interest holder means a person who holds of record an interest.

(29) Means denotes an exhaustive definition.

(30) Membership means the rights of a member in a domestic or foreign nonprofit corporation.

(31) Nonfiling entity means an unincorporated entity that is of a type that is not created by filing a public organic document.

(32) Nonprofit corporation or domestic nonprofit corporation means a corporation incorporated under the laws of this state and subject to the provisions of the Nebraska Nonprofit Corporation Act.

(33) Notice is defined in section 21-215.

(34) Organic document means a public organic document or a private organic document.

(35) Organic law means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(36) Owner liability means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(i) Solely by reason of the person's status as a shareholder, member, or interest holder; or

(ii) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(37) Person includes an individual and an entity.

(38) Principal office means the office, in or out of this state, so designated in the biennial report where the principal executive offices of a domestic or foreign corporation are located.

(39) Private organic document means any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated.

(40) Public organic document means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

(41) Proceeding includes civil suit and criminal, administrative, and investigatory action.

(42) Public corporation means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association.

(43) Qualified director is defined in section 21-217.

(44) Record date means the date established under sections 21-237 to 21-252 or 21-253 to 21-283 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the Nebraska Model Business Corporation Act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(45) Record shareholder means (i) the person in whose name shares are registered in the records of the corporation or (ii) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to section 21-265 on file with the corporation to the extent of the rights granted by such certificate.

(46) Secretary means the corporate officer to whom the board of directors has delegated responsibility under subsection (c) of section 21-2,105 for custody

of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(47) Shareholder means, unless varied for purposes of a specific provision, a record shareholder.

(48) Shares means the units into which the proprietary interests in a corporation are divided.

(49) Sign or signature means, with present intent to authenticate or adopt a document:

(i) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(ii) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(50) State, when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(51) Subscriber means a person who subscribes for shares in a corporation, whether before or after incorporation.

(52) Unincorporated entity means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: A domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(53) United States includes district, authority, bureau, commission, department, and any other agency of the United States.

(54) Voting group means all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

(55) Voting power means the current power to vote in the election of directors.

(56) Voting trust beneficial owner means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to subsection (a) of section 21-272. Unrestricted voting trust beneficial owner means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(57) Writing or written means any information in the form of a document.

Source: Laws 2014, LB749, § 14; Laws 2016, LB794, § 2; Laws 2017, LB35, § 2.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-215 Notices and other communications.

(MBCA 1.41) (a) Notice under the Nebraska Model Business Corporation Act must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under the act must be in English.

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impractical, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (1) when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (2) when electronically transmitted to the shareholder in a manner authorized by the shareholder. Notice by a public corporation to its shareholder is effective if the notice is addressed to the shareholder or group of shareholders in a manner permitted by rules and regulations adopted and promulgated under the federal Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a et seq., if the public corporation has first received affirmative written consent or implied consent required under such rules and regulations.

(d) Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

(e) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (l) of this section.

(f) Any consent under subsection (e) of this section may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (1) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communications, except that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(g) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(h) Receipt of an electronic acknowledgment from an information processing system described in subdivision (g)(1) of this section establishes that an elec-

tronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(i) An electronic transmission is received under this section even if no individual is aware of its receipt.

(j) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in a physical form, the earliest of when it is actually received or when it is left at:

(i) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under subsection (c) of section 21-2,221;

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal place of business;

(2) If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (g) of this section; and

(5) If oral, when communicated.

(k) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (1) the electronic transmission is otherwise retrievable in perceivable form and (2) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

(l) If the Nebraska Model Business Corporation Act prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of the act, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

Source: Laws 2014, LB749, § 15.

21-216 Number of shareholders.

(MBCA 1.42) (a) For purposes of the Nebraska Model Business Corporation Act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

(1) Three or fewer co-owners;

(2) A corporation, partnership, limited liability company, trust, estate, or other entity; or

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of the act, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Source: Laws 2014, LB749, § 16; Laws 2016, LB794, § 3.

21-217 Qualified director.

(MBCA 1.43) (a) A qualified director is a director who, at the time action is to be taken under:

(1) Section 21-279, does not have (i) a material interest in the outcome of the proceeding or (ii) a material relationship with a person who has such an interest;

(2) Section 21-2,113 or 21-2,115, (i) is not a party to the proceeding, (ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under section 21-2,124, which transaction or disclaimer is challenged in the proceeding, and (iii) does not have a material relationship with a director described in either subdivision (a)(2)(i) or (ii) of this section;

(3) Section 21-2,122, is not a director (i) as to whom the transaction is a director's conflicting interest transaction or (ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction;

(4) Section 21-2,124, would be a qualified director under subdivision (a)(3) of this section if the business opportunity were a director's conflicting interest transaction; or

(5) Subdivision (b)(6) of section 21-220, is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply or (ii) who has a material relationship with another officer to whom the limitation or elimination would apply.

(b) For purposes of this section:

(1) Material relationship means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(2) Material interest means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(c) The presence of one or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter or by any person that has a material relationship with that director, acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director; or

(3) With respect to action to be taken under section 21-279, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

Source: Laws 2014, LB749, § 17; Laws 2017, LB35, § 3.

21-218 Householding.

(MBCA 1.44) (a) A corporation has delivered written notice or any other report or statement under the Nebraska Model Business Corporation Act, the articles of incorporation, or the bylaws to all shareholders who share a common address if:

(1) The corporation delivers one copy of the notice, report, or statement to the common address;

(2) The corporation addresses the notice, report, or statement to those shareholders as a group, to each of those shareholders individually, or to the shareholders in a form to which each of those shareholders has consented; and

(3) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

(b) Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (a) of this section, shall be deemed to have consented to receiving such single copy at the common address.

Source: Laws 2014, LB749, § 18.

PART 2—INCORPORATION

21-219 Incorporators.

(MBCA 2.01) One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

Source: Laws 2014, LB749, § 19.

21-220 Articles of incorporation.

(MBCA 2.02) (a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-230;

(2) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(4) The name and address of each incorporator; and

(5) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. The provision is not effective if such corporation does not become or ceases to be so registered.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) A par value for authorized shares or classes of shares; or

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) Any provision that under the Nebraska Model Business Corporation Act is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (i) the amount of a financial benefit received by a director to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or the shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law;

(5) A provision permitting or making obligatory indemnification of a director for liability, as defined in subdivision (3) of section 21-2,110, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law; and

(6) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person. Any application of such a provision to an officer or a related person of that officer (i) also requires a determination by the board of directors by action of qualified directors taken in compliance with the same procedures as are set forth in section 21-2,122 subsequent to the effective date of the provision applying the provision to a particular officer or any related person of that officer, and (ii) may be limited by the authorizing action of the board.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in the Nebraska Model Business Corporation Act.

(d) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (k) of section 21-203.

(e) As used in this section, related person has the meaning specified in section 21-2,120.

Source: Laws 2014, LB749, § 20; Laws 2017, LB35, § 4.

21-221 Incorporation.

(MBCA 2.03) (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source: Laws 2014, LB749, § 21.

21-222 Liability for preincorporation transactions.

(MBCA 2.04) All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Nebraska Model Business Corporation Act, are jointly and severally liable for all liabilities created while so acting.

Source: Laws 2014, LB749, § 22.

21-223 Organization of corporation.

(MBCA 2.05) (a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by the Nebraska Model Business Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

Source: Laws 2014, LB749, § 23.

21-224 Bylaws.

(MBCA 2.06) (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

(c) The bylaws may contain one or both of the following provisions:

(1) A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(2) A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, except that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

(d) Notwithstanding subdivision (b)(2) of section 21-2,159, the shareholders in amending, repealing, or adopting a bylaw described in subsection (c) of this section may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw in order to provide for a reasonable, practicable, and orderly process.

Source: Laws 2014, LB749, § 24.

21-225 Emergency bylaws.

(MBCA 2.07) (a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) Procedures for calling a meeting of the board of directors;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 2014, LB749, § 25.

PART 3—PURPOSES AND POWERS

21-226 Purposes.

(MBCA 3.01) (a) Every corporation incorporated under the Nebraska Model Business Corporation Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under the Nebraska Model Business Corporation Act only if permitted by, and subject to all limitations of, the other statute.

(c) Corporations shall not be organized under the act to perform any professional services as specified in section 21-2202 except for professional services rendered by a designated broker as defined in section 81-885.01.

(d) A designated broker as defined in section 81-885.01 may be organized as a corporation under the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 26.

21-227 General powers.

(MBCA 3.02) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property. A corporation may transfer any interest in real estate by instrument, with or without a corporate seal, signed by the president, a vice president, or the presiding officer of the board of directors of the corporation. Such instrument, when acknowledged by such officer to be an act of the corporation, is presumed to be valid and may be recorded in the proper office of the county in which the real estate is located in the same manner as other such instruments;
- (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) To be a promoter, partner, member, associate, or manager of any limited liability company, partnership, joint venture, trust, or other entity;
- (10) To conduct its business, locate offices, and exercise the powers granted by the Nebraska Model Business Corporation Act within or without this state;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) To transact any lawful business that will aid governmental policy; and

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Source: Laws 2014, LB749, § 27; Laws 2016, LB794, § 4.

21-228 Emergency powers.

(MBCA 3.03) (a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source: Laws 2014, LB749, § 28.

21-229 Ultra vires.

(MBCA 3.04) (a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a shareholder against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the Attorney General under section 21-2,197.

(c) In a shareholder's proceeding under subdivision (b)(1) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

(d) Venue for a proceeding under subdivision (b)(1) or (b)(2) of this section lies in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 2014, LB749, § 29.

PART 4—NAME

21-230 Corporate name.

(MBCA 4.01) (a) A corporate name:

(1) Must 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

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-226 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must not be the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231 or 21-232;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(5) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(6) Any other business entity name registered or filed with the Secretary of State pursuant to the law of this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, 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 the 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 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:

(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 corporate name, of the other corporation or business entity.

(e) The Nebraska Model Business Corporation Act does not control the use of fictitious names.

Source: Laws 2014, LB749, § 30.

Cross References

Nebraska Banking Act, see section 8-101.02.

21-231 Reserved name.

(MBCA 4.02) (a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

Source: Laws 2014, LB749, § 31.

21-232 Registered name.

(MBCA 4.03) (a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 21-2,208, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State, the corporate names that are not available under subsection (b) of section 21-230.

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 21-2,208, by delivering to the Secretary of State for filing an application:

(1) Setting forth its corporate name, or its corporate name with any addition required by section 21-2,208, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is delivered.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under the Nebraska Model Business Corporation Act or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Source: Laws 2014, LB749, § 32.

PART 5—OFFICE AND AGENT

21-233 Registered office and registered agent.

(MBCA 5.01) Each corporation must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office; or

(ii) A domestic or foreign corporation or other eligible entity whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is authorized to transact business in the state.

Source: Laws 2014, LB749, § 33.

21-234 Change of registered office or registered agent.

(MBCA 5.02) (a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's business office changes, the agent may change the street address or, if one

exists, the post office box number, of the registered office of any corporation for which the agent is the registered agent by delivering a signed written notice of the change to the corporation and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a signed statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 2014, LB749, § 34.

21-235 Resignation of registered agent.

(MBCA 5.03) (a) A registered agent may resign the agent's appointment by signing and delivering to the Secretary of State for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 2014, LB749, § 35.

21-236 Service on corporation.

(MBCA 5.04) (a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Source: Laws 2014, LB749, § 36.

PART 6—SHARES AND DISTRIBUTIONS

SUBPART 1—SHARES

21-237 Authorized shares.

(MBCA 6.01) (a) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must de-

scribe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations, of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series.

(b) The articles of incorporation must authorize:

(1) One or more classes or series of shares that together have unlimited voting rights; and

(2) One or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes or series of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by the Nebraska Model Business Corporation Act;

(2) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

(ii) For cash, indebtedness, securities, or other property; and

(iii) At prices and in amounts specified or determined in accordance with a formula;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(4) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

(d) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (k) of section 21-203.

(e) Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

(f) The description of the preferences, rights, and limitations of classes or series of shares in subsection (c) of this section is not exhaustive.

Source: Laws 2014, LB749, § 37.

21-238 Terms of class or series determined by board of directors.

(MBCA 6.02) (a) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

(1) Classify any unissued shares into one or more classes or into one or more series within a class;

(2) Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(3) Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(b) If the board of directors acts pursuant to subsection (a) of this section, it must determine the terms, including the preferences, rights, and limitations, to the same extent permitted under section 21-237, of:

- (1) Any class of shares before the issuance of any shares of that class; or
- (2) Any series within a class before the issuance of any shares of that series.

(c) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment setting forth the terms determined under subsection (a) of this section.

Source: Laws 2014, LB749, § 38.

21-239 Issued and outstanding shares.

(MBCA 6.03) (a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to section 21-252.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

Source: Laws 2014, LB749, § 39.

21-240 Fractional shares.

(MBCA 6.04) (a) A corporation may:

- (1) Issue fractions of a share or pay in money the value of fractions of a share;
- (2) Arrange for disposition of fractional shares by the shareholders; and
- (3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled scrip and must contain the information required by subsection (b) of section 21-246.

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

- (1) That the scrip will become void if not exchanged for full shares before a specified date; and
- (2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source: Laws 2014, LB749, § 40.

SUBPART 2—ISSUANCE OF SHARES

21-241 Subscription for shares before incorporation.

(MBCA 6.20) (a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 21-242.

Source: Laws 2014, LB749, § 41.

21-242 Issuance of shares.

(MBCA 6.21) (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(f)(1) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the matter exists if:

(i) The shares, other securities, or rights are issued for consideration other than cash or cash equivalents; and

(ii) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(2) In this subsection:

(i) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of (A) the voting power of the shares to be issued or (B) the voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued; and

(ii) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

Source: Laws 2014, LB749, § 42.

21-243 Liability of shareholders.

(MBCA 6.22) (a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 21-242 or specified in the subscription agreement under section 21-241.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation, except that he or she may become personally liable by reason of his or her own acts or conduct.

Source: Laws 2014, LB749, § 43.

21-244 Share dividends.

(MBCA 6.23) (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

Source: Laws 2014, LB749, § 44.

21-245 Share options and other awards.

(MBCA 6.24) (a) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (1) the terms upon which the rights, options, or warrants are issued and (2) the terms, including the consideration for which the shares or

other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

(b) The terms and conditions of such rights, options, or warrants, including those outstanding on January 1, 2017, may include, without limitation, restrictions or conditions that:

(1) Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons; or

(2) Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

(c) The board of directors may authorize one or more officers to (1) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (2) determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, except that an officer may not use such authority to designate himself or herself or any other persons as the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

Source: Laws 2014, LB749, § 45; Laws 2015, LB157, § 1.

21-246 Form and content of certificates.

(MBCA 6.25) (a) Shares may but need not be represented by certificates. Unless the Nebraska Model Business Corporation Act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) The name of the issuing corporation and that it is organized under the law of this state;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate (1) must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Source: Laws 2014, LB749, § 46.

21-247 Shares without certificates.

(MBCA 6.26) (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections (b) and (c) of section 21-246, and, if applicable, section 21-248.

Source: Laws 2014, LB749, § 47.

21-248 Restriction on transfer of shares and other securities.

(MBCA 6.27) (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by subsection (b) of section 21-247. Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) To preserve exemptions under federal or state securities law or under the Internal Revenue Code; or

(3) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(2) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 2014, LB749, § 48.

21-249 Expense of issue.

(MBCA 6.28) A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

Source: Laws 2014, LB749, § 49.

SUBPART 3—SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

21-250 Shareholders' preemptive rights.

(MBCA 6.30) (a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide. The shareholders of a corporation organized prior to January 1, 1996, shall continue to have a preemptive right to acquire the corporation's unissued shares in the manner provided in this section if the articles of incorporation of the corporation did not on or after January 1, 1996, expressly eliminate such preemptive rights to its shareholders.

(b) A statement included in the articles of incorporation that the corporation elects to have preemptive rights, or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(2) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration;

(3) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation; and

(iv) Shares sold otherwise than for money;

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class;

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with

respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; and

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, shares includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: Laws 2014, LB749, § 50; Laws 2016, LB794, § 5.

21-251 Corporation's acquisition of its own shares.

(MBCA 6.31) (a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Source: Laws 2014, LB749, § 51.

SUBPART 4—DISTRIBUTIONS

21-252 Distributions to shareholders.

(MBCA 6.40) (a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g) of this section, the effect of a distribution under subsection (c) of this section is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other

property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under sections 21-2,184 to 21-2,202.

Source: Laws 2014, LB749, § 52.

PART 7—SHAREHOLDERS

SUBPART 1—MEETINGS

21-253 Annual meeting.

(MBCA 7.01) (a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 21-256, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(d) Notwithstanding the provisions of this section, a corporation registered as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., which, pursuant to section 21-220, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, is not required to hold an annual meeting of the shareholders except as provided in such articles of incorporation or as otherwise required by such act and the rules and regulations adopted and promulgated under such act.

Source: Laws 2014, LB749, § 53; Laws 2016, LB794, § 6.

21-254 Special meeting.

(MBCA 7.02) (a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) If shareholders holding at least ten percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, except that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under section 21-255 or 21-259, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c) of section 21-257 may be conducted at a special shareholders' meeting.

Source: Laws 2014, LB749, § 54; Laws 2017, LB35, § 5.

21-255 Court-ordered meeting.

(MBCA 7.03) (a) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation, if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of a shareholder who signed a demand for a special meeting valid under section 21-254, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) For purposes of subdivision (a)(1) of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Source: Laws 2014, LB749, § 55; Laws 2017, LB35, § 6.

21-256 Action without meeting.

(MBCA 7.04) (a) Action required or permitted by the Nebraska Model Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(b) The articles of incorporation may provide that any action required or permitted by the Nebraska Model Business Corporation Act to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted; provided that the use of written consent to elect directors must be unanimous. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(c) If not otherwise fixed under section 21-259 and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 21-259 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If the Nebraska Model Business Corporation Act requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten days

after (1) written consents sufficient to take the action have been delivered to the corporation or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the act, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after (1) written consents sufficient to take the action have been delivered to the corporation or (2) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d) of this section. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the Nebraska Model Business Corporation Act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) of this section shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, except that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

Source: Laws 2014, LB749, § 56; Laws 2016, LB794, § 7.

21-257 Notice of meeting.

(MBCA 7.05) (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to section 21-261 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. Unless the Nebraska Model Business Corporation Act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

(b) Unless the Nebraska Model Business Corporation Act or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 21-255 or 21-259, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 21-259, however, notice of the adjourned meeting must be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Source: Laws 2014, LB749, § 57.

21-258 Waiver of notice.

(MBCA 7.06) (a) A shareholder may waive any notice required by the Nebraska Model Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Source: Laws 2014, LB749, § 58.

21-259 Record date.

(MBCA 7.07) (a) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

(e) The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time

it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

Source: Laws 2014, LB749, § 59.

21-260 Conduct of the meeting.

(MBCA 7.08) (a) At each meeting of shareholders, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(b) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes nor any revocations or changes thereto may be accepted.

Source: Laws 2014, LB749, § 60.

21-261 Remote participation in annual and special meetings.

(MBCA 7.09) (a) Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures:

(1) To verify that each person participating remotely is a shareholder; and

(2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrently with such proceedings.

Source: Laws 2014, LB749, § 61.

SUBPART 2—VOTING

21-262 Shareholders' list for meeting.

(MBCA 7.20) (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection (e) of section 21-259 to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group, and within each voting

group by class or series of shares, and show the address of and number of shares held by each shareholder.

(b) The shareholders' list for notice must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the record date for voting. A shareholder, or the shareholder's agent or attorney, is entitled upon written demand to inspect and, subject to the requirements of subsection (c) of section 21-2,222, to copy a list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect a shareholders' list before or at the meeting or copy a list as permitted by subsection (b) of this section, the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Source: Laws 2014, LB749, § 62.

21-263 Voting entitlement of shares.

(MBCA 7.21) (a) Except as provided in subsections (b) and (d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Source: Laws 2014, LB749, § 63.

21-264 Proxies.

(MBCA 7.22) (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to count votes. An appointment is valid for the term provided in the appointment form and, if no term is provided, is valid for eleven months unless the appointment is irrevocable under subsection (d) of this section.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under section 21-273.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to count votes before the proxy exercises authority under the appointment.

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) Unless it otherwise provides, an appointment made irrevocable under subsection (d) of this section continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to section 21-266 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: Laws 2014, LB749, § 64; Laws 2017, LB35, § 7.

21-265 Shares held by intermediaries and nominees.

(MBCA 7.23) (a) A corporation's board of directors may establish a procedure under which a person on whose behalf shares are registered in the name of an intermediary or nominee may elect to be treated by the corporation as the

record shareholder by filing with the corporation a beneficial ownership certificate. The extent, terms, conditions, and limitations of this treatment shall be specified in the procedure. To the extent such person is treated under such procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder shall not have those rights or privileges.

(b) The procedure shall specify:

(1) The types of intermediaries or nominees to which it applies;

(2) The rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed;

(3) The manner in which the procedure is selected, which shall include that the beneficial ownership certificate be signed or assented to by or on behalf of the record shareholder and the person or persons on whose behalf the shares are held;

(4) The information that must be provided when the procedure is selected;

(5) The period for which selection of the procedure is effective;

(6) Requirements for notice to the corporation with respect to the arrangement; and

(7) The form and contents of the beneficial ownership certificate.

(c) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

Source: Laws 2014, LB749, § 65; Laws 2017, LB35, § 8.

21-266 Corporation's acceptance of votes.

(MBCA 7.24) (a) If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

(4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or

(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the person authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) Neither the corporation nor the person authorized to count votes, including an inspector of election under section 21-271, that accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection (b) of section 21-264 is liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) If an inspector of election has been appointed under section 21-271, the inspector of election also has the authority to request information and make determinations under subsections (a), (b), and (c) of this section. Any determination made by the inspector of election under those subsections is controlling.

Source: Laws 2014, LB749, § 66; Laws 2017, LB35, § 9.

21-267 Quorum and voting requirements for voting groups.

(MBCA 7.25) (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section is governed by section 21-269.

(e) The election of directors is governed by section 21-270.

(f) Whenever a provision of the Nebraska Model Business Corporation Act provides for voting of classes or series as separate voting groups, the rules provided in subsection (c) of section 21-2,153 for amendments of articles of incorporation apply to that provision.

Source: Laws 2014, LB749, § 67.

21-268 Action by single and multiple voting groups.

(MBCA 7.26) (a) If the articles of incorporation or the Nebraska Model Business Corporation Act provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 21-267.

(b) If the articles of incorporation or the act provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 21-267. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Source: Laws 2014, LB749, § 68.

21-269 Greater quorum or voting requirements.

(MBCA 7.27) (a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by the Nebraska Model Business Corporation Act.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Source: Laws 2014, LB749, § 69.

21-270 Voting for directors; cumulative voting.

(MBCA 7.28) (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) In all elections for directors, every shareholder entitled to vote at such elections shall have the right to vote in person or by proxy for the number of shares owned by him or her, for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares shall equal, or to distribute them upon the same principle among as many candidates as he or she thinks fit, and such directors shall not be elected in any other manner.

Source: Laws 2014, LB749, § 70.

21-271 Inspectors of election.

(MBCA 7.29) (a) A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the duties of inspector under subsection (b) of this section, and may rely on information provided by such persons and other persons, including those appointed to count votes, unless the inspectors believe reliance is unwarranted.

(b) The inspectors shall:

(1) Ascertain the number of shares outstanding and the voting power of each;

- (2) Determine the shares represented at a meeting;
- (3) Determine the validity of proxy appointments and ballots;
- (4) Count the votes; and
- (5) Make a written report of the results.

(c) In performing their duties, the inspectors may examine (1) the proxy appointment forms and any other information provided in accordance with subsection (b) of section 21-264, (2) any envelope or related writing submitted with those appointment forms, (3) any ballots, (4) any evidence or other information specified in section 21-266, and (5) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

(d) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (b) of this section, including for the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy is authorized by the record shareholder to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall, in their report under subsection (b) of this section, specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is relevant and reliable.

(e) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under section 21-271.01 or other judicial proceeding.

Source: Laws 2014, LB749, § 71; Laws 2017, LB35, § 10.

21-271.01 Judicial review of corporate elections, shareholder votes, and other corporate governance disputes.

(MBCA 7.29A) (a) Upon application of or in a proceeding commenced by a person specified in subsection (b) of this section, the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may determine:

- (1) The validity of the election, appointment, removal, or resignation of a director or officer of the corporation;
- (2) The right of an individual to hold the office of director or officer of the corporation;
- (3) The result or validity of an election or vote by the shareholders of the corporation;
- (4) The right of a director to membership on a committee of the board of directors; and
- (5) The right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to subsection (c) of section 21-224 or any

comparable right under any provision of the articles of incorporation, contract, or applicable law.

(b) An application or proceeding pursuant to subsection (a) of this section may be filed or commenced by any of the following persons:

(1) The corporation;

(2) Any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(3) A director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of his or her right to such office or membership;

(4) An officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his or her right to such office; and

(5) A person claiming a right covered by subdivision (a)(5) of this section and who is seeking a determination of such right.

(c) In connection with any application or proceeding under subsection (a) of this section, the following shall be named as defendants, unless such person made the application or commenced the proceeding:

(1) The corporation;

(2) Any individual whose right to office or membership on a committee of the board of directors is contested;

(3) Any individual claiming the office or membership at issue; and

(4) Any person claiming a right covered by subdivision (a)(5) of this section that is at issue.

(d) In connection with any application or proceeding under subsection (a) of this section, service of process may be made upon each of the persons specified in subsection (c) of this section either by:

(1) Serving on the corporation process addressed to such person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(2) Service of process on such person in any manner provided by statute of this state or by rule of the applicable court.

(e) When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subdivision (d)(1) of this section, the plaintiff and the corporation or its registered agent shall promptly provide written notice of such service, together with copies of all process and the application or complaint, to such person at the person's last-known residence or business address, or as permitted by statute of this state or by rule of the applicable court.

(f) In connection with any application or proceeding under subsection (a) of this section, the court shall dispose of the application or proceeding on an expedited basis and also may:

(1) Order such additional or further notice as the court deems proper under the circumstances;

(2) Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;

(3) Order an election or meeting be held in accordance with the provisions of subsection (b) of section 21-255 or otherwise;

(4) Appoint a master to conduct an election or meeting;

(5) Enter temporary, preliminary, or permanent injunctive relief;

(6) Resolve solely for the purpose of this proceeding any legal or factual issues necessary for the resolution of any of the matters specified in subsection (a) of this section, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(7) Order such other relief as the court determines is equitable, just, and proper.

(g) It is not necessary to make shareholders parties to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subdivision (c)(4) of this section, relief is sought against the shareholder individually, or the court orders joinder pursuant to subdivision (f)(2) of this section.

(h) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as they existed prior to the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (a) of this section.

Source: Laws 2017, LB35, § 11.

SUBPART 3—VOTING TRUSTS AND AGREEMENTS

21-272 Voting trusts.

(MBCA 7.30) (a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee must prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(c) Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust. A voting trust that became effective when the business corporation statutes repealed by Laws 2014, LB749, provided a ten-year limit on its duration remains governed by the provisions of such statutes then in effect, unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

Source: Laws 2014, LB749, § 72.

21-273 Voting agreements.

(MBCA 7.31) (a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A

voting agreement created under this section is not subject to the provisions of section 21-272.

(b) A voting agreement created under this section is specifically enforceable.

Source: Laws 2014, LB749, § 73.

21-274 Shareholder agreements.

(MBCA 7.32) (a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of the Nebraska Model Business Corporation Act in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 21-252;

(3) Establishes who shall be directors or officers of the corporation or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) As set forth (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (b) of section 21-247. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any

purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(h) Limits, if any, on the duration of an agreement authorized by this section shall be as set forth in the agreement. An agreement that became effective when the business corporation statutes repealed by Laws 2014, LB749, provided for a ten-year limit on duration of shareholder agreements, unless the agreement provided otherwise, remains governed by the provisions of such statutes then in effect.

Source: Laws 2014, LB749, § 74.

SUBPART 4—DERIVATIVE PROCEEDINGS

21-275 Subpart definitions.

(MBCA 7.40) In sections 21-275 to 21-282:

(1) Derivative proceeding means a civil suit in the right of a domestic corporation or, to the extent provided in section 21-282, in the right of a foreign corporation.

(2) Shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Source: Laws 2014, LB749, § 75; Laws 2017, LB35, § 12.

21-276 Standing.

(MBCA 7.41) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Source: Laws 2014, LB749, § 76.

21-277 Demand.

(MBCA 7.42) (a) No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

(b) Venue for a proceeding under this section lies in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located.

Source: Laws 2014, LB749, § 77.

21-278 Stay of proceedings.

(MBCA 7.43) If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Source: Laws 2014, LB749, § 78.

21-279 Dismissal.

(MBCA 7.44) (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (b) or (e) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by:

(1) A majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(2) A majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (1) that a majority of the board of directors did not consist of qualified directors at the time the determination was

made or (2) that the requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met, and if not, the corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met.

(e) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

Source: Laws 2014, LB749, § 79.

21-280 Discontinuance or settlement.

(MBCA 7.45) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Source: Laws 2014, LB749, § 80.

21-281 Payment of expenses.

(MBCA 7.46) On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including attorney's fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including attorney's fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Source: Laws 2014, LB749, § 81.

21-282 Applicability to foreign corporations.

(MBCA 7.47) In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 21-275 to 21-282 shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 21-278, 21-280, and 21-281.

Source: Laws 2014, LB749, § 82.

SUBPART 5—PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER

21-283 Shareholder action to appoint custodian or receiver.

(MBCA 7.48) (a) The court may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder when it is established that:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation, authorized to transact business in this state, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(g) In this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Source: Laws 2014, LB749, § 83; Laws 2017, LB35, § 13.

PART 8—DIRECTORS AND OFFICERS

SUBPART 1—BOARD OF DIRECTORS

21-284 Requirement for and functions of board of directors.

(MBCA 8.01) (a) Except as provided in section 21-274, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction and subject to the oversight of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 21-274.

(c) In the case of a public corporation, the board's oversight responsibilities include attention to:

- (1) Business performance and plans;
 - (2) Major risks to which the corporation is or may be exposed;
 - (3) The performance and compensation of senior officers;
 - (4) Policies and practices to foster the corporation's compliance with law and ethical conduct;
 - (5) Preparation of the corporation's financial statements;
 - (6) The effectiveness of the corporation's internal controls;
 - (7) Arrangements for providing adequate and timely information to directors;
- and
- (8) The composition of the board and its committees, taking into account the important role of independent directors.

Source: Laws 2014, LB749, § 84.

21-285 Qualifications of directors.

(MBCA 8.02) (a) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(b) A requirement that is based on a past, current, or prospective action, or expression of an opinion, by a nominee or director that could limit the ability of a nominee or director to discharge his or her duties as a director is not a permissible qualification under this section. Notwithstanding the foregoing, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(c) A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(d) A qualification for nomination for director prescribed before a person's nomination shall apply to such person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination shall not apply to such person with respect to such nomination.

(e) A qualification for director prescribed before the start of a director's term may apply only at the time an individual becomes a director or may apply

during a director's term. A qualification prescribed during a director's term shall not apply to that director before the end of that term.

Source: Laws 2014, LB749, § 85; Laws 2017, LB35, § 14.

21-286 Number and election of directors.

(MBCA 8.03) (a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 21-289.

(d) If a corporation is registered as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., and, pursuant to section 21-220, has included in its articles of incorporation a provision limiting or eliminating the requirement to hold an annual meeting of the shareholders, the initial directors shall be elected at the first meeting of the shareholders after such provision limiting or eliminating such meeting is included in the articles of incorporation, and thereafter the election of directors by shareholders is not required unless required by such federal act or the rules and regulations under such act or otherwise required by the Nebraska Model Business Corporation Act.

Source: Laws 2014, LB749, § 86.

21-287 Election of directors by certain classes of shareholders.

(MBCA 8.04) If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Source: Laws 2014, LB749, § 87.

21-288 Terms of directors generally.

(MBCA 8.05) (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next or, if their terms are staggered in accordance with section 21-289, at the applicable second or third annual shareholders' meeting following their election, except to the extent a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Except to the extent otherwise provided in the articles of incorporation, despite the expiration of a director's term, the director continues to serve until

the director's successor is elected and qualifies or there is a decrease in the number of directors.

Source: Laws 2014, LB749, § 88.

21-289 Staggered terms for directors.

(MBCA 8.06) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Source: Laws 2014, LB749, § 89.

21-290 Resignation of directors.

(MBCA 8.07) (a) A director may resign at any time by delivering a written resignation to the board of directors or its chairperson or to the secretary of the corporation.

(b) A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

Source: Laws 2014, LB749, § 90.

21-291 Removal of directors by shareholders.

(MBCA 8.08) (a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) A director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

Source: Laws 2014, LB749, § 91.

21-292 Removal of directors by judicial proceeding.

(MBCA 8.09) (a) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that (1) the director engaged in fraudulent conduct with respect to the corporation or its shareholders,

grossly abused the position of director, or intentionally inflicted harm on the corporation and (2) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(b) A shareholder proceeding on behalf of the corporation under subsection (a) of this section shall comply with all of the requirements of sections 21-275 to 21-282, except subdivision (1) of section 21-276.

(c) The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

Source: Laws 2014, LB749, § 92.

21-293 Vacancy on board.

(MBCA 8.10) (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

(c) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection (b) of section 21-290 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

Source: Laws 2014, LB749, § 93.

21-294 Compensation of directors.

(MBCA 8.11) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Source: Laws 2014, LB749, § 94.

SUBPART 2—MEETINGS AND ACTION OF THE BOARD

21-295 Meetings.

(MBCA 8.20) (a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear

each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Source: Laws 2014, LB749, § 95.

21-296 Action without meeting.

(MBCA 8.21) (a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by the Nebraska Model Business Corporation Act to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Source: Laws 2014, LB749, § 96.

21-297 Notice of meeting.

(MBCA 8.22) (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Source: Laws 2014, LB749, § 97.

21-298 Waiver of notice.

(MBCA 8.23) (a) A director may waive any notice required by the Nebraska Model Business Corporation Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2014, LB749, § 98.

21-299 Quorum and voting.

(MBCA 8.24) (a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in the Nebraska Model Business Corporation Act, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting; (2) the dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Source: Laws 2014, LB749, § 99.

21-2,100 Committees.

(MBCA 8.25) (a) Unless the Nebraska Model Business Corporation Act or the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any such committee.

(b) Unless the Nebraska Model Business Corporation Act otherwise provides, the creation of a committee and appointment of members to it must be approved by the greater of (1) a majority of all the directors in office when the action is taken or (2) the number of directors required by the articles of incorporation or bylaws to take action under section 21-299.

(c) Sections 21-295 to 21-299 apply both to committees of the board and to their members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 21-284.

(e) A committee may not, however:

(1) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;

(2) Approve or propose to shareholders action that the Nebraska Model Business Corporation Act requires be approved by shareholders;

(3) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees; or

(4) Adopt, amend, or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 21-2,102.

(g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

Source: Laws 2014, LB749, § 100.

21-2,101 Submission of matters for shareholder vote.

(MBCA 8.26) A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

Source: Laws 2014, LB749, § 101.

SUBPART 3—DIRECTORS

21-2,102 Standards of conduct for directors.

(MBCA 8.30) (a)(1) Each member of the board of directors, when discharging the duties of a director, shall act (i) in good faith and (ii) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) A director may, but need not, in considering the best interests of the corporation, consider, among other things, the effects of any action on employees, suppliers, creditors, and customers of the corporation and communities in which offices or other facilities of the corporation are located.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decisionmaking function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decisionmaking or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(d) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subdivision (f)(1) or (f)(3) of this section to whom the board may have delegated, formally or informally by course of

conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(e) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f) of this section.

(f) A director is entitled to rely, in accordance with subsection (d) or (e) of this section, on:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence; or

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

Source: Laws 2014, LB749, § 102.

21-2,103 Standards of liability for directors.

(MBCA 8.31) (a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(1) No defense interposed by the director based on (i) any provision in the articles of incorporation authorized by subdivision (b)(4) or (6) of section 21-220, (ii) the protection afforded by section 21-2,121 for action taken in compliance with section 21-2,122 or 21-2,123, or (iii) the protection afforded by section 21-2,124, precludes liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith;

(ii) A decision:

(A) Which the director did not reasonably believe to be in the best interests of the corporation; or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(iii) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(iv) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention by making, or causing to be made, appropriate inquiry when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged conduct;

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under subdivision (b)(3) of section 21-2,121, alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of the Nebraska Model Business Corporation Act, such as the provisions governing the consequences of an unlawful distribution under section 21-2,104 or a transactional interest under section 21-2,121, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

Source: Laws 2014, LB749, § 103; Laws 2017, LB35, § 15.

21-2,104 Directors' liability for unlawful distributions.

(MBCA 8.33) (a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to subsection (a) of section 21-252 or subsection (a) of section 21-2,192 is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating subsection (a) of section 21-252 or subsection (a) of section 21-2,192 if the party asserting liability establishes that when taking the action the director did not comply with section 21-2,102.

(b) A director held liable under subsection (a) of this section for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) of this section for the unlawful distribution; and

(2) Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution

was made in violation of subsection (a) of section 21-252 or subsection (a) of section 21-2,192.

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) of this section is barred unless it is commenced within two years after the date (i) on which the effect of the distribution was measured under subsection (e) or (g) of section 21-252, (ii) as of which the violation of subsection (a) of section 21-252 occurred as the consequence of disregard of a restriction in the articles of incorporation, or (iii) on which the distribution of assets to shareholders under subsection (a) of section 21-2,192 was made; or

(2) Contribution or recoupment under subsection (b) of this section is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

Source: Laws 2014, LB749, § 104.

SUBPART 4—OFFICERS

21-2,105 Officers.

(MBCA 8.40) (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under subsections (a) and (e) of section 21-2,221.

(d) The same individual may simultaneously hold more than one office in a corporation.

Source: Laws 2014, LB749, § 105.

21-2,106 Functions of officers.

(MBCA 8.41) Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

Source: Laws 2014, LB749, § 106.

21-2,107 Standards of conduct for officers.

(MBCA 8.42) (a) An officer, when performing in such capacity, has the duty to act:

(1) In good faith;

(2) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) The duty of an officer includes the obligation:

(1) To inform the superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to such superior officer, board, or committee; and

(2) To inform his or her superior officer, or another appropriate person within the corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(1) The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(2) Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.

(d) An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take any action as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 21-2,103 that have relevance.

Source: Laws 2014, LB749, § 107.

21-2,108 Resignation and removal of officers.

(MBCA 8.43) (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(b) An officer may be removed at any time with or without cause by (1) the board of directors, (2) the officer who appointed such officer, unless the bylaws or the board of directors provide otherwise, or (3) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, appointing officer means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

Source: Laws 2014, LB749, § 108.

21-2,109 Contract rights of officers.

(MBCA 8.44) (a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Source: Laws 2014, LB749, § 109.

SUBPART 5—INDEMNIFICATION AND ADVANCE FOR EXPENSES

21-2,110 Subpart definitions.

(MBCA 8.50) In sections 21-2,110 to 21-2,119:

(1) Corporation includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) Director or officer means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, member of a limited liability company, partner, trustee, employee, or agent of another entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. Director or officer includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) Liability means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(4) Official capacity means (i) when used with respect to a director, the office of director in a corporation and (ii) when used with respect to an officer, as contemplated in section 21-2,116, the office in a corporation held by the officer. Official capacity does not include service for any other domestic or foreign corporation or any limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity.

(5) Party means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

(6) Proceeding means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Source: Laws 2014, LB749, § 110; Laws 2016, LB794, § 8.

21-2,111 Permissible indemnification.

(MBCA 8.51) (a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

- (1)(i) The director conducted himself or herself in good faith; and
- (ii) Reasonably believed:

(A) In the case of conduct in an official capacity, that his or her conduct was in the best interests of the corporation; and

(B) In all other cases, that the director's conduct was at least not opposed to the best interests of the corporation; and

(iii) In the case of any criminal proceeding, the director had no reasonable cause to believe his or her conduct was unlawful; or

(2) The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by subdivision (b)(5) of section 21-220.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subdivision (a)(1)(ii)(B) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under subdivision (a)(3) of section 21-2,114, a corporation may not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled, whether or not involving action in the director's official capacity.

Source: Laws 2014, LB749, § 111.

21-2,112 Mandatory indemnification.

(MBCA 8.52) A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she was a director of the corporation against expenses incurred by the director in connection with the proceeding.

Source: Laws 2014, LB749, § 112.

21-2,113 Advance for expenses.

(MBCA 8.53) (a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation a signed written undertaking of the director to repay any funds advanced (1) if the director is not entitled to mandatory indemnification under section 21-2,112 and (2) it is ultimately determined under section 21-2,114 or 21-2,115 that the director is not entitled to indemnification.

(b) The undertaking required by subdivision (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee consisting solely of two or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with subsection (c) of section 21-299, in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Source: Laws 2014, LB749, § 113; Laws 2017, LB35, § 16.

21-2,114 Court-ordered indemnification and advance for expenses.

(MBCA 8.54) (a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 21-2,112;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a) of section 21-2,118; or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if, in the case of subdivision (a)(3)(i) or (ii) of this section he or she has not met the relevant standard of conduct set forth in subsection (a) of section 21-2,111, failed to comply with section 21-2,113, or was adjudged liable in a proceeding referred to in subdivision (d)(1) or (2) of section 21-2,111, but if the director was adjudged so liable indemnification shall be limited to expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under subdivision (a)(1) of this section or to indemnification or advance for expenses under subdivision (a)(2) of this section, it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subdivision (a)(3) of this section, it may also order the corporation to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

Source: Laws 2014, LB749, § 114; Laws 2017, LB35, § 17.

21-2,115 Determination and authorization of indemnification.

(MBCA 8.55) (a) A corporation may not indemnify a director under section 21-2,111 unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in section 21-2,111.

(b) The determination shall be made:

(1) If there are two or more qualified directors, by the board of directors by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote;

(2) By special legal counsel:

(i) Selected in the manner prescribed in subdivision (1) of this subsection; or

(ii) If there are fewer than two qualified directors, selected by the board of directors, in which selection directors who are not qualified directors may participate; or

(3) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subdivision (b)(2)(ii) of this section.

Source: Laws 2014, LB749, § 115.

21-2,116 Indemnification of officers.

(MBCA 8.56) (a) A corporation may indemnify and advance expenses under sections 21-2,110 to 21-2,119 to an officer of the corporation who is a party to a proceeding because he or she is an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:

(i) Liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding; or

(ii) Liability arising out of conduct that constitutes:

(A) Receipt by the officer of a financial benefit to which he or she is not entitled;

(B) An intentional infliction of harm on the corporation or the shareholders; or

(C) An intentional violation of criminal law.

(b) The provisions of subdivision (a)(2) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-2,112 and may apply to a court under section 21-2,114 for indemnification or an advance for expenses, in each case to the

same extent to which a director may be entitled to indemnification or advance for expenses under such provisions.

Source: Laws 2014, LB749, § 116.

21-2,117 Insurance.

(MBCA 8.57) A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, member, partner, trustee, employee, or agent of another domestic or foreign corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from his or her status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under sections 21-2,110 to 21-2,119.

Source: Laws 2014, LB749, § 117; Laws 2016, LB794, § 9.

21-2,118 Variation by corporate action; application of subchapter.

(MBCA 8.58) (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 21-2,111 or advance funds to pay for or reimburse expenses in accordance with section 21-2,113. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (c) of section 21-2,113 and in subsection (c) of section 21-2,115. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 21-2,113 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) A right of indemnification or to advances for expenses created by sections 21-2,110 to 21-2,119 or under subsection (a) of this section and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection (a) of this section, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

(c) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party existing at the time the merger takes effect shall be governed by subdivision (a)(4) of section 21-2,167.

(d) Subject to subsection (b) of this section, a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to sections 21-2,110 to 21-2,119.

(e) Sections 21-2,110 to 21-2,119 do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when he or she is not a party.

(f) Sections 21-2,110 to 21-2,119 do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Source: Laws 2014, LB749, § 118.

21-2,119 Exclusivity of subpart.

(MBCA 8.59) A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 21-2,110 to 21-2,119.

Source: Laws 2014, LB749, § 119.

SUBPART 6—DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

21-2,120 Subpart definitions.

(MBCA 8.60) In sections 21-2,120 to 21-2,123:

(1) Director's conflicting interest transaction means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(i) To which, at the relevant time, the director is a party;

(ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) Control, including the term controlled by, means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) Relevant time means (i) the time at which directors' action respecting the transaction is taken in compliance with section 21-2,122, or (ii) if the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 21-2,122, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(4) Material financial interest means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) Related person means:

(i) The individual's spouse;

(ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew, or spouse of any thereof, of the individual or of the individual's spouse;

(iii) A natural person living in the same home as the individual;

(iv) An entity, other than the corporation or an entity controlled by the corporation, controlled by the individual or any person specified in subdivisions (5)(i) through (iii) of this section;

(v) A domestic or foreign (A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the individual is a director, (B) unincorporated entity of which the individual is a general partner or a member of the governing body, or (C) individual, trust, or estate for whom or of which the individual is a trustee, guardian, personal representative, or like fiduciary; or

(vi) A person that is, or an entity that is controlled by, an employer of the individual.

(6) Fair to the corporation means, for purposes of subdivision (b)(3) of section 21-2,121, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation and (ii) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(7) Required disclosure means disclosure of (i) the existence and nature of the director's conflicting interest and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Source: Laws 2014, LB749, § 120; Laws 2017, LB35, § 18.

21-2,121 Judicial action.

(MBCA 8.61) (a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction if:

(1) Directors' action respecting the transaction was taken in compliance with section 21-2,122 at any time;

(2) Shareholders' action respecting the transaction was taken in compliance with section 21-2,123 at any time; or

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

Source: Laws 2014, LB749, § 121.

21-2,122 Directors' action.

(MBCA 8.62) (a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (b)(1) of section 21-2,121 if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction after required disclosure by the conflicted director of information not already known by such qualified directors or after modified disclosure in compliance with subsection (b) of this section if:

(1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(2) When the action has been taken by a committee, all members of the committee were qualified directors and either (i) the committee was composed of all the qualified directors on the board of directors or (ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in subdivision (5)(v) or (vi) of section 21-2,120 is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule if the conflicted director discloses to the qualified directors voting on the transaction:

(1) All information required to be disclosed that is not so violative;

(2) The existence and nature of the director's conflicting interest; and

(3) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee in which action directors who are not qualified directors may participate.

Source: Laws 2014, LB749, § 122.

21-2,123 Shareholders' action.

(MBCA 8.63) (a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (b)(2) of section 21-2,121 if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after (1) notice to shareholders describing the action to be taken respecting the transaction, (2) provision to the corporation of the information referred to in subsection (b) of this section, and (3) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to count votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c) of this section and the identity of the holders of those shares.

(c) For purposes of this section: (1) Holder means and held by refers to shares held by a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; and (2) qualified shares means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to count votes either knows, or under subsection (b) of this section is notified, are held by (i) a director who has a conflicting interest respecting the transaction or (ii) a related person of the director, excluding a person described in subdivision (5)(vi) of section 21-2,120.

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director and may give such effect, if any, to the shareholders' vote as the court considers appropriate in the circumstances.

(f) When shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders in which action shares that are not qualified shares may participate.

Source: Laws 2014, LB749, § 123; Laws 2017, LB35, § 19.

SUBPART 7—BUSINESS OPPORTUNITIES

21-2,124 Business opportunities.

(MBCA 8.70) (a) If a director or officer pursues or takes advantage of a business opportunity, directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation if:

(1) Before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,122; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,123;

in either case as if the decision being made concerned a director's conflicting interest transaction, except that, rather than making required disclosure as defined in section 21-2,120, the director or officer shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer; or

(2) The duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted, and where required, made effective by action of qualified directors, in accordance with subdivision (b)(6) of section 21-220.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subdivision (a)(1)(i) or (ii) of this section before pursuing or taking advantage of the opportunity shall not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

Source: Laws 2014, LB749, § 124; Laws 2017, LB35, § 20.

PART 9—DOMESTICATION AND CONVERSION

SUBPART 1—PRELIMINARY PROVISIONS

21-2,125 Excluded transactions.

(MBCA 9.01) Sections 21-2,125 to 21-2,149 may not be used to effect a transaction that converts an insurance company organized on the mutual principle to one organized on a stock-share basis.

Source: Laws 2014, LB749, § 125.

21-2,126 Required approvals.

(MBCA 9.02) (a) If a domestic or foreign business corporation or eligible entity may not be a party to a merger without the approval of the Attorney General, the Department of Banking and Finance, the Department of Insurance, or the Public Service Commission, the corporation or eligible entity shall not be a party to a transaction under sections 21-2,125 to 21-2,149 without the prior approval of that agency.

(b) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not, by any transaction under sections 21-2,125 to 21-2,149, be diverted from the objects for which it was donated, granted, or devised unless and until the eligible entity obtains an order of the court specifying the disposition of the property to the extent required by and pursuant to *cy pres* or other nondiversion law of this state.

Source: Laws 2014, LB749, § 126.

SUBPART 2—DOMESTICATION

21-2,127 Domestication.

(MBCA 9.20) (a) A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation.

(b) A domestic business corporation may become a foreign business corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in sections 21-2,127 to 21-2,132.

(c) The plan of domestication must include:

(1) A statement of the jurisdiction in which the corporation is to be domesticated;

(2) The terms and conditions of the domestication;

(3) The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any desired amendments to the articles of incorporation of the corporation following its domestication.

(d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of this state or the other jurisdiction to consummate the domestication, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by section 21-2,154 or by comparable provisions of the laws of the other jurisdiction; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 127; Laws 2015, LB157, § 2.

21-2,128 Action on a plan of domestication.

(MBCA 9.21) In the case of a domestication of a domestic business corporation in a foreign jurisdiction:

(1) The plan of domestication must be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders

approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of domestication requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and if any class or series of shares is entitled to vote as a separate group on the plan, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group exists.

(6) Subject to subdivision (7) of this section, separate voting by voting groups is required by each class or series of shares that:

(i) Are to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(ii) Are entitled to vote as a separate group on a provision of the plan that constitutes a proposed amendment to articles of incorporation of the corporation following its domestication that requires action by separate voting groups under section 21-2,153; or

(iii) Is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subdivision (6)(i) of this section.

(8) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 128; Laws 2015, LB157, § 3.

21-2,129 Articles of domestication.

(MBCA 9.22) (a) After the domestication of a foreign business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of

domestication shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication in this state.

(b) The articles of domestication shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication shall be delivered to the Secretary of State for filing, and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of domestication take effect, a foreign business corporation becoming a domestic business corporation shall send written notice of domestication to the last-known address of any holder of a security interest in collateral of such foreign business corporation.

(d) If the foreign corporation is authorized to transact business in this state under sections 21-2,203 to 21-2,220, its certificate of authority shall be canceled automatically on the effective date of its domestication.

Source: Laws 2014, LB749, § 129; Laws 2017, LB99, § 1.

21-2,130 Surrender of charter upon domestication.

(MBCA 9.23) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,127 to 21-2,132, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

(3) A statement that the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect at the effective time provided in section 21-206. Within ten business days

after the articles of charter surrender take effect, a domestic business corporation becoming domesticated in a foreign jurisdiction shall send written notice of charter surrender to the last-known address of any holder of a security interest in collateral of such domestic business corporation.

Source: Laws 2014, LB749, § 130; Laws 2017, LB99, § 2.

21-2,131 Effect of domestication.

(MBCA 9.24) (a) When a domestication becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;

(4) The articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of a foreign corporation domesticating in this state;

(5) The shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or into cash or other property in accordance with the terms of the domestication, and the shareholders are entitled only to the rights provided by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(6) The corporation is deemed to:

(i) Be incorporated under and subject to the organic law of the domesticated corporation for all purposes;

(ii) Be the same corporation without interruption as the domesticating corporation; and

(iii) Have been incorporated on the date the domesticating corporation was originally incorporated.

(b) When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective, the foreign business corporation is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in this state shall be as follows:

(1) The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication;

(2) The shareholder shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication;

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection, as if the domestication had not occurred; and

(4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to

any owner liability preserved by subdivision (1) of this subsection, if the domestication had not occurred.

(d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication in this state shall have owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication.

Source: Laws 2014, LB749, § 131.

21-2,132 Abandonment of a domestication.

(MBCA 9.25) (a) Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,127 to 21-2,132, and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) of this section after articles of charter surrender have been filed with the Secretary of State but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the domestication. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

(c) If the domestication of a foreign business corporation in this state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Secretary of State, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 132.

SUBPART 3—NONPROFIT CONVERSION

21-2,133 Nonprofit conversion.

(MBCA 9.30) (a) A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

(b) A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in sections 21-2,133 to 21-2,138.

(c) The plan of nonprofit conversion must include:

(1) The terms and conditions of the conversion;

(2) The manner and basis of reclassifying the shares of the corporation following its conversion into memberships, if any, or securities, obligations,

rights to acquire memberships or securities, cash, other property, or any combination of the foregoing;

(3) Any desired amendments to the articles of incorporation of the corporation following its conversion; and

(4) If the domestic business corporation is to be converted to a foreign nonprofit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(d) The plan of nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of memberships or securities, obligations, rights to acquire memberships or securities, cash, or other property to be received by the shareholders under the plan;

(2) The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by section 21-2,154; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, contains a provision applying to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 133; Laws 2015, LB157, § 4.

21-2,134 Action on a plan of nonprofit conversion.

(MBCA 9.31) In the case of a conversion of a domestic business corporation to a domestic or foreign nonprofit corporation:

(1) The plan of nonprofit conversion must be adopted by the board of directors.

(2) After adopting the plan of nonprofit conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of nonprofit conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the meeting of shareholders at which the plan of nonprofit conversion is to be submitted for approval. The

notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the nonprofit conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of nonprofit conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the nonprofit conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger, other than a provision that eliminates or limits voting or appraisal rights, and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended subsequent to that date.

Source: Laws 2014, LB749, § 134; Laws 2015, LB157, § 5.

21-2,135 Articles of nonprofit conversion.

(MBCA 9.32) (a) After a plan of nonprofit conversion providing for the conversion of a domestic business corporation to a domestic nonprofit corporation has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of nonprofit conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of nonprofit conversion and if that name does not satisfy the requirements of the Nebraska Nonprofit Corporation Act, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of the Nebraska Nonprofit Corporation Act; and

(2) A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation.

(b) The articles of nonprofit conversion shall either contain all of the provisions that the Nebraska Nonprofit Corporation Act requires to be set forth in articles of incorporation of a domestic nonprofit corporation and any other desired provisions permitted by the Nebraska Nonprofit Corporation Act or shall have attached articles of incorporation that satisfy the requirements of the Nebraska Nonprofit Corporation Act. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

(c) The articles of nonprofit conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of nonprofit conversion take effect, a domestic business corporation converting into a domestic nonprofit corporation shall send written notice of conversion to the last-known address of

any holder of a security interest in collateral of such domestic business corporation.

Source: Laws 2014, LB749, § 135; Laws 2017, LB99, § 3.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2,136 Surrender of charter upon foreign nonprofit conversion.

(MBCA 9.33) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,133 to 21-2,138, a plan of nonprofit conversion providing for the corporation to be converted to a foreign nonprofit corporation, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign nonprofit corporation;

(3) A statement that the foreign nonprofit conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect on the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 136.

21-2,137 Effect of nonprofit conversion.

(MBCA 9.34) (a) When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;

(4) The articles of incorporation of the domestic or foreign nonprofit corporation become effective;

(5) The shares of the corporation are reclassified into memberships, securities, obligations, rights to acquire memberships or securities, or into cash or other property in accordance with the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit conversion or to any rights they may have under sections 21-2,171 to 21-2,183; and

(6) The corporation is deemed to:

(i) Be a domestic nonprofit corporation for all purposes;

(ii) Be the same corporation without interruption as the corporation that existed prior to the conversion; and

(iii) Have been incorporated on the date that it was originally incorporated as a domestic business corporation.

(b) When a conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, the foreign nonprofit corporation is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) The owner liability of a shareholder in a domestic business corporation that converts to a domestic nonprofit corporation shall be as follows:

(1) The conversion does not discharge any owner liability of the shareholder as a shareholder of the business corporation to the extent any such owner liability arose before the effective time of the articles of nonprofit conversion;

(2) The shareholder shall not have owner liability for any debt, obligation, or liability of the nonprofit corporation that arises after the effective time of the articles of nonprofit conversion;

(3) The laws of this state shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred and the nonprofit corporation was still a business corporation; and

(4) The shareholder shall have whatever rights of contribution from other shareholders that are provided by the laws of this state with respect to any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred and the nonprofit corporation were still a business corporation.

(d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the nonprofit corporation shall have owner liability only for those debts, obligations, or liabilities of the nonprofit corporation that arise after the effective time of the articles of nonprofit conversion.

Source: Laws 2014, LB749, § 137.

21-2,138 Abandonment of a nonprofit conversion.

(MBCA 9.35) (a) Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,133 to 21-2,138, and at any time before the nonprofit conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a nonprofit conversion is abandoned under subsection (a) of this section after articles of nonprofit conversion or articles of charter surrender have been filed with the Secretary of State but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the nonprofit conversion. The statement shall take effect upon filing and the nonprofit conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 138.

SUBPART 4—FOREIGN NONPROFIT DOMESTICATION
AND CONVERSION**21-2,139 Foreign nonprofit domestication and conversion.**

(MBCA 9.40) A foreign nonprofit corporation may become a domestic business corporation if the domestication and conversion is permitted by the organic law of the foreign nonprofit corporation.

Source: Laws 2014, LB749, § 139.

21-2,140 Articles of domestication and conversion.

(MBCA 9.41) (a) After the conversion of a foreign nonprofit corporation to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication and conversion shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication and conversion of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in this state.

(b) The articles of domestication and conversion shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication and conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of domestication and conversion take effect, a foreign nonprofit corporation converting into a domestic business corporation shall send written notice of domestication and conversion to the last-known address of any holder of a security interest in collateral of such foreign nonprofit corporation.

(d) If the foreign nonprofit corporation is authorized to transact business in this state under the foreign qualification provision of the Nebraska Nonprofit Corporation Act, its certificate of authority shall be canceled automatically on the effective date of its domestication and conversion.

Source: Laws 2014, LB749, § 140; Laws 2017, LB99, § 4.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

21-2,141 Effect of foreign nonprofit domestication and conversion.

(MBCA 9.42) (a) When a domestication and conversion of a foreign nonprofit corporation to a domestic business corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the domestication and conversion had not occurred;

(4) The articles of domestication and conversion, or the articles of incorporation attached to the articles of domestication and conversion, constitute the articles of incorporation of the corporation;

(5) Shares, other securities, obligations, rights to acquire shares or other securities of the corporation, or cash or other property shall be issued or paid as provided pursuant to the laws of the foreign jurisdiction so long as at least one share is outstanding immediately after the effective time; and

(6) The corporation is deemed to:

(i) Be a domestic corporation for all purposes;

(ii) Be the same corporation without interruption as the foreign nonprofit corporation; and

(iii) Have been incorporated on the date the foreign nonprofit corporation was originally incorporated.

(b) The owner liability of a member of a foreign nonprofit corporation that domesticates and converts to a domestic business corporation shall be as follows:

(1) The domestication and conversion does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication and conversion;

(2) The member shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication and conversion;

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the domestication and conversion had not occurred; and

(4) The member shall have whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subdivision (1) of this subsection as if the domestication and conversion had not occurred.

(c) A member of a foreign nonprofit corporation who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication and conversion in this state shall have owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication and conversion.

Source: Laws 2014, LB749, § 141.

21-2,142 Abandonment of a foreign nonprofit domestication and conversion.

(MBCA 9.43) If the domestication and conversion of a foreign nonprofit corporation to a domestic business corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed with the Secretary of State, a statement that the domestication and conversion has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing. The statement shall take effect upon filing and the domestication and conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 142.

SUBPART 5—ENTITY CONVERSION

21-2,143 Entity conversion authorized; definitions.

(MBCA 9.50) (a) A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.

(b) A domestic business corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(c) A domestic unincorporated entity may become a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights exercised in accordance with the procedures in sections 21-2,143 to 21-2,149 and sections 21-2,171 to 21-2,183. Without limiting the provisions of this subsection, a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) of this section and subdivision (7) of section 21-2,145. For purposes of applying sections 21-2,143 to 21-2,149 and 21-2,171 to 21-2,183:

(1) The unincorporated entity, its interest holders, interests, and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction.

(e) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before January 1, 2017, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended subsequent to that date.

(f) As used in sections 21-2,143 to 21-2,149:

(1) Converting entity means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation; and

(2) Surviving entity means the corporation or unincorporated entity that is in existence immediately after consummation of an entity conversion pursuant to sections 21-2,143 to 21-2,149.

Source: Laws 2014, LB749, § 143; Laws 2015, LB157, § 6.

21-2,144 Plan of entity conversion.

(MBCA 9.51) (a) A plan of entity conversion must include:

(1) A statement of the type of other entity the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) The terms and conditions of the conversion;

(3) The manner and basis of converting the shares of the domestic business corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and

(4) The full text, as they will be in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

(b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, or other property to be received under the plan by the shareholders;

(2) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to section 21-2,154; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(c) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

Source: Laws 2014, LB749, § 144.

21-2,145 Action on a plan of entity conversion.

(MBCA 9.52) In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by the board of directors.

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision

(2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of entity conversion requires the approval of each class or series of shares of the corporation voting as a separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the conversion by that voting group exists.

(6) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2017, applies to a merger of the corporation, other than a provision that limits or eliminates voting or appraisal rights, and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended.

(7) If as a result of the conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the signing, by each such shareholder, of a separate written consent to become subject to such owner liability.

Source: Laws 2014, LB749, § 145; Laws 2015, LB157, § 7.

21-2,146 Articles of entity conversion.

(MBCA 9.53) (a) After the conversion of a domestic business corporation to a domestic unincorporated entity has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of entity conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the surviving entity;

(2) State the type of unincorporated entity that the surviving entity will be;

(3) Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by the act and the articles of incorporation; and

(4) If the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired

provisions that are permitted or have attached a public organic document; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic unincorporated entity to a domestic business corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion shall be signed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

(3) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a foreign unincorporated entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be signed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(3) Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

(4) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(d) The articles of entity conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of entity conversion take effect, the converting entity shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of the converting entity. Articles of entity conversion under subsection (a) or (b) of this section may be combined with any required conversion filing under the organic

law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to sections 21-2,203 to 21-2,220, its certificate of authority or other type of foreign qualification shall be canceled automatically on the effective date of its conversion.

Source: Laws 2014, LB749, § 146; Laws 2017, LB99, § 5.

21-2,147 Surrender of charter upon conversion.

(MBCA 9.54) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,143 to 21-2,149, a plan of entity conversion providing for the corporation to be converted to a foreign unincorporated entity, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign unincorporated entity;

(3) A statement that the conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation;

(4) The jurisdiction under the laws of which the surviving entity will be organized; and

(5) If the surviving entity will be a nonfiling entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect on the effective time provided in section 21-206.

Source: Laws 2014, LB749, § 147.

21-2,148 Effect of entity conversion.

(MBCA 9.55) (a) When a conversion under sections 21-2,143 to 21-2,149 becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;

(2) The liabilities of the converting entity remain the liabilities of the surviving entity;

(3) An action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;

(4) In the case of a surviving entity that is a filing entity, its articles of incorporation or public organic document and its private organic document become effective;

(5) In the case of a surviving entity that is a nonfiling entity, its private organic document becomes effective;

(6) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity; and

(7) The surviving entity is deemed to:

(i) Be incorporated or organized under and subject to the organic law of the converting entity for all purposes;

(ii) Be the same corporation or unincorporated entity without interruption as the converting entity; and

(iii) Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic business corporation to a foreign other entity becomes effective, the surviving entity is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(c) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the surviving entity shall be personally liable only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unincorporated entity that converts to a domestic business corporation shall be as follows:

(1) The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any such owner liability arose before the effective time of the articles of entity conversion;

(2) The interest holder shall not have owner liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion;

(3) The provisions of the organic law of the unincorporated entity shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred; and

(4) The interest holder shall have whatever rights of contribution from other interest holders that are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by subdivision (1) of this subsection as if the conversion had not occurred.

Source: Laws 2014, LB749, § 148.

21-2,149 Abandonment of an entity conversion.

(MBCA 9.56) (a) Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after the plan has been adopted and approved as required by sections 21-2,143 to 21-2,149 and at any time before the entity conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the Secretary of State but before the entity conversion has become effective, a statement that the entity

conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 149.

PART 10—AMENDMENT OF ARTICLES OF
INCORPORATION AND BYLAWS

SUBPART 1—AMENDMENT OF ARTICLES OF INCORPORATION

21-2,150 Authority to amend.

(MBCA 10.01) (a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Source: Laws 2014, LB749, § 150.

21-2,151 Amendment before issuance of shares.

(MBCA 10.02) If a corporation has not yet issued shares, its board of directors or its incorporators if it has no board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Source: Laws 2014, LB749, § 151.

21-2,152 Amendment by board of directors and shareholders.

(MBCA 10.03) If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(1) The proposed amendment must be adopted by the board of directors.

(2) Except as provided in sections 21-2,154, 21-2,156, and 21-2,157, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(4) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subdivision (3) of this section, requires a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in subsection (c) of section 21-2,153, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

Source: Laws 2014, LB749, § 152.

21-2,153 Voting on amendments by voting groups.

(MBCA 10.04) (a) If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by the Nebraska Model Business Corporation Act, on a proposed amendment to the articles of incorporation if the amendment would:

- (1) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
- (2) Effect an exchange or reclassification or create the right of exchange of all or part of the shares of another class into shares of the class;
- (3) Change the rights, preferences, or limitations of all or part of the shares of the class;
- (4) Change the shares of all or part of the class into a different number of shares of the same class;
- (5) Create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;
- (6) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;
- (7) Limit or deny an existing preemptive right of all or part of the shares of the class; or
- (8) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a) of this section, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Source: Laws 2014, LB749, § 153.

21-2,154 Amendment by board of directors.

(MBCA 10.05) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) If the corporation has only one class of shares outstanding:

(i) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(ii) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word corporation, incorporated, company, limited, or the abbreviation corp., inc., co., or ltd., for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of subsection (b) of section 21-251, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of subsection (b) of section 21-251, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by subsection (a) or (b) of section 21-238 to be made without shareholder approval.

Source: Laws 2014, LB749, § 154.

21-2,155 Articles of amendment.

(MBCA 10.06) After an amendment to the articles of incorporation has been adopted and approved in the manner required by the Nebraska Model Business Corporation Act and by the articles of incorporation, the corporation shall deliver to the Secretary of State, for filing, articles of amendment, which shall set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted, or the information required by subdivision (k)(5) of section 21-203;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts

objectively ascertainable outside the articles of amendment in accordance with subdivision (k)(5) of section 21-203;

(4) The date of each amendment's adoption; and

(5) If an amendment:

(i) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required;

(ii) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by the act and by the articles of incorporation; or

(iii) Is being filed pursuant to subdivision (k)(5) of section 21-203, a statement to that effect.

Source: Laws 2014, LB749, § 155.

21-2,156 Restated articles of incorporation.

(MBCA 10.07) (a) A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

(b) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 21-2,152.

(c) A corporation that restates its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, also includes the statements required under section 21-2,155.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(e) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (c) of this section.

Source: Laws 2014, LB749, § 156.

21-2,157 Amendment pursuant to reorganization.

(MBCA 10.08) (a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: Laws 2014, LB749, § 157.

21-2,158 Effect of amendment.

(MBCA 10.09) An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Source: Laws 2014, LB749, § 158.

SUBPART 2—AMENDMENT OF BYLAWS

21-2,159 Amendment by board of directors or shareholders.

(MBCA 10.20) (a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

(1) The articles of incorporation or section 21-2,160 reserves that power exclusively to the shareholders in whole or part; or

(2) Except as provided in subsection (d) of section 21-224, the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

Source: Laws 2014, LB749, § 159.

21-2,160 Bylaw increasing quorum or voting requirement for directors.

(MBCA 10.21) (a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) If originally adopted by the shareholders, only by the shareholders unless the bylaw otherwise provides; or

(2) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted

by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Source: Laws 2014, LB749, § 160.

PART 11—MERGERS AND SHARE EXCHANGES

21-2,161 Definitions.

(MBCA 11.01) As used in sections 21-2,161 to 21-2,168:

(1) Merger means a business combination pursuant to section 21-2,162.

(2) Party to a merger or party to a share exchange means any domestic or foreign corporation or eligible entity that will:

(i) Merge under a plan of merger;

(ii) Acquire shares or eligible interests of another corporation or an eligible entity in a share exchange; or

(iii) Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(3) Share exchange means a business combination pursuant to section 21-2,163.

(4) Survivor in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

Source: Laws 2014, LB749, § 161.

21-2,162 Merger.

(MBCA 11.02) (a) One or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger or two or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in sections 21-2,161 to 21-2,168.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation or may be created by the terms of the plan of merger only if the merger is permitted by the organic law of the foreign business corporation or eligible entity.

(c) If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183. For the purposes of applying sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183:

(1) The eligible entity, its members or interest holders, eligible interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa as the context may require; and

(2) If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(d) The plan of merger must include:

(1) The name of each domestic or foreign business corporation or eligible entity that will merge and the name of the domestic or foreign business corporation or eligible entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any domestic or foreign business or nonprofit corporation or the organic documents of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or by the articles of incorporation or organic document of any such party.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(2) The articles of incorporation of any corporation or the organic documents of any unincorporated entity that will survive or be created as a result of the merger, except for changes permitted by section 21-2,154 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted, or devised unless and until the eligible entity obtains an order of the court specifying the disposition of the property to the extent required by and pursuant to cy pres or other nondiversion law of this state.

Source: Laws 2014, LB749, § 162.

21-2,163 Share exchange.

(MBCA 11.03) (a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing pursuant to a plan of share exchange.

(b) A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the organic law of the corporation or other entity.

(c) If the organic law of a domestic other entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effectuated in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and appraisal rights exercised, in accordance with the procedures in sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183. For the purposes of applying sections 21-2,161 to 21-2,168 and 21-2,171 to 21-2,183:

(1) The other entity, its interest holders, interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa as the context may require; and

(2) If the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) The plan of share exchange must include:

(1) The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any such party.

(e) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection (k) of section 21-203.

(f) The plan of share exchange may also include a provision that the plan may be amended prior to filing articles of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required or

permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, or other property to be issued by the corporation or to be received under the plan by the shareholders of or owners of interests in any party to the share exchange; or

(2) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

Source: Laws 2014, LB749, § 163.

21-2,164 Action on a plan of merger or share exchange.

(MBCA 11.04) In the case of a domestic corporation that is a party to a merger or share exchange:

(1) The plan of merger or share exchange must be adopted by the board of directors.

(2) Except as provided in subdivision (8) of this section and in section 21-2,165, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan unless (i) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (ii) section 21-2,101 applies. If either subdivision (2)(i) or (ii) of this section applies, the board must transmit to the shareholders the basis for so proceeding.

(3) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(4) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(5) Unless the articles of incorporation or the board of directors acting pursuant to subdivision (3) of this section requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and if any class or series of shares is entitled to vote as a separate

group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(6) Subject to subdivision (7) of this section, separate voting by voting groups is required:

(i) On a plan of merger, by each class or series of shares that:

(A) Are to be converted under the plan of merger into other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing; or

(B) Are entitled to vote as a separate group on a provision in the plan that constitutes a proposed amendment to articles of incorporation of a surviving corporation, that requires action by separate voting groups under section 21-2,153;

(ii) On a plan of share exchange, by each class or series of shares included in the exchange with each class or series constituting a separate voting group; and

(iii) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(7) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in subdivisions (6)(i)(A) and (6)(ii) of this section as to any class or series of shares, except for a transaction that (i) includes what is or would be, if the corporation were the surviving corporation, an amendment subject to subdivision (6)(i)(B) of this section and (ii) will effect no significant change in the assets of the resulting entity, including all parents and subsidiaries on a consolidated basis.

(8) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

(i) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(ii) Except for amendments permitted by section 21-2,154, its articles of incorporation will not be changed;

(iii) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(iv) The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under subsection (f) of section 21-242.

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution by each such shareholder of a separate written consent to become subject to such owner liability.

Source: Laws 2014, LB749, § 164.

21-2,165 Merger between parent and subsidiary or between subsidiaries.

(MBCA 11.05) (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If under subsection (a) of this section approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall within ten days after the effective date of the merger notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of sections 21-2,161 to 21-2,168 applicable to mergers generally.

Source: Laws 2014, LB749, § 165.

21-2,166 Articles of merger or share exchange.

(MBCA 11.06) (a) After a plan of merger or share exchange has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange;

(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the act and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

(b) Articles of merger or share exchange shall be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect at the effective time provided in section 21-206. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic

eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

Source: Laws 2014, LB749, § 166.

21-2,167 Effect of merger or share exchange.

(MBCA 11.07) (a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(3) All property owned by and every contract right possessed by each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor;

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organic documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organic documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger and the interests in an eligible entity that is a party to a merger that are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under sections 21-2,171 to 21-2,183 or the organic law of the eligible entity.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under sections 21-2,171 to 21-2,183.

(c) A person who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to agree that it will promptly pay the amount, if any, to which such shareholders are entitled under sections 21-2,171 to 21-2,183.

(e) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger or share exchange shall be as follows:

(1) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange;

(2) The person shall not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to the merger or share exchange for any debt, obligation, or liability that arises after the effective time of the articles of merger or share exchange;

(3) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (1) of this subsection as if the merger or share exchange had not occurred; and

(4) The person shall have whatever rights of contribution from other persons provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by subdivision (1) of this subsection as if the merger or share exchange had not occurred.

Source: Laws 2014, LB749, § 167.

21-2,168 Abandonment of a merger or share exchange.

(MBCA 11.08) (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by sections 21-2,161 to 21-2,168, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) of this section after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

Source: Laws 2014, LB749, § 168.

PART 12—DISPOSITION OF ASSETS

21-2,169 Disposition of assets not requiring shareholder approval.

(MBCA 12.01) No approval of the shareholders of a corporation is required, unless the articles of incorporation otherwise provide:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;

(3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation; or

(4) To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

Source: Laws 2014, LB749, § 169.

21-2,170 Shareholder approval of certain dispositions.

(MBCA 12.02) (a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 21-2,169, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenue from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless (1) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation or (2) section 21-2,101 applies. If either subdivision (b)(1) or (2) of this section applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b) of this section and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under sections 21-2,184 to 21-2,202 is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

Source: Laws 2014, LB749, § 170.

PART 13—APPRAISAL RIGHTS

SUBPART 1—RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

21-2,171 Definitions.

(MBCA 13.01) In sections 21-2,171 to 21-2,183:

(1) Affiliate means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of subdivision (5) of this section, a person is deemed to be an affiliate of its senior executives.

(2) Corporation means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 21-2,176 to 21-2,182, includes the surviving entity in a merger.

(3) Fair value means the value of the corporation's shares determined:

(i) Immediately before the effectuation of the corporate action to which the shareholder objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision (a)(5) of section 21-2,172.

(4) Interest means interest from the effective date of the corporate action until the date of payment at the rate of interest specified in section 45-104, as such rate may from time to time be adjusted by the Legislature.

(5) Interested transaction means a corporate action described in subsection (a) of section 21-2,172, other than a merger pursuant to section 21-2,165, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

(i) Interested person means a person or an affiliate of a person who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(A) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares;

(B) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation; or

(C) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(I) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(II) Employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 21-2,122; or

(III) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate;

(ii) Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group; and

(iii) Excluded shares means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(6) Preferred shares means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(7) Senior executive means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(8) Shareholder means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

Source: Laws 2014, LB749, § 171; Laws 2017, LB35, § 21.

21-2,172 Right to appraisal.

(MBCA 13.02) (a) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by section 21-2,164, except that appraisal rights shall not be available to any shareholder of the corporation

with respect to shares of any class or series that remain outstanding after consummation of the merger or (ii) if the corporation is a subsidiary and the merger is governed by section 21-2,165;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to section 21-2,170 if the shareholder is entitled to vote on the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if (i) under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash its net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of distribution and (ii) the disposition of assets is not an interested transaction;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(5) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation as the shares held by the shareholder before the domestication;

(7) Consummation of a conversion of the corporation to nonprofit status pursuant to sections 21-2,133 to 21-2,138; or

(8) Consummation of a conversion of the corporation to an unincorporated entity pursuant to sections 21-2,143 to 21-2,149.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (a)(1), (2), (3), (4), (6), and (8) of this section shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) A covered security under section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended, 15 U.S.C. 77r(b)(1)(A) or (B);

(ii) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, beneficial shareholders, and voting trust beneficial owners owning more than ten percent of such shares; or

(iii) Issued by an open-end management investment company registered with the Securities and Exchange Commission under the federal Investment Compa-

ny Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., and may be redeemed at the option of the holder at net asset value;

(2) The applicability of subdivision (b)(1) of this section shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders;

(3) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares (i) who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation or any other proprietary interest of any other entity that satisfies the standards set forth in subdivision (b)(1) of this section at the time the corporate action becomes effective or (ii) in the case of the consummation of a disposition of assets pursuant to section 21-2,170, unless such cash, shares, or proprietary interests are, under the terms of the corporate action approved by the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of the distribution; and

(4) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that (1) no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a nonprofit conversion under sections 21-2,133 to 21-2,138, or a conversion to an unincorporated entity under sections 21-2,143 to 21-2,149, or a merger having a similar effect and (2) any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year after that date if such action would otherwise afford appraisal rights.

(d) The right to dissent and obtain payment under sections 21-2,171 to 21-2,183 shall not apply to shareholders of a bank, trust company, stock-owned savings and loan association, or the holding company of any such bank, trust company, or stock-owned savings and loan association.

Source: Laws 2014, LB749, § 172; Laws 2016, LB794, § 10; Laws 2017, LB35, § 22.

21-2,173 Assertion of rights by nominees and beneficial owners.

(MBCA 13.03) (a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subdivision (b)(2)(ii) of section 21-2,176; and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

Source: Laws 2014, LB749, § 173; Laws 2017, LB35, § 23.

SUBPART 2—PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS**21-2,174 Notice of appraisal rights.**

(MBCA 13.20) (a) When any corporate action specified in subsection (a) of section 21-2,172 is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under sections 21-2,171 to 21-2,183. If the corporation concludes that appraisal rights are or may be available, a copy of sections 21-2,171 to 21-2,183 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to section 21-2,165, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 21-2,176.

(c) When any corporate action specified in subsection (a) of section 21-2,172 is to be approved by written consent of the shareholders pursuant to section 21-256:

(1) Written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 21-2,171 to 21-2,183; and

(2) Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting share-

holders required by subsections (e) and (f) of section 21-256, may include the materials described in section 21-2,176, and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of sections 21-2,171 to 21-2,183.

(d) When corporate action described in subsection (a) of section 21-2,172 is proposed or a merger pursuant to section 21-2,165 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(1) The annual financial statements specified in subsection (a) of section 21-2,227 of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen months before the date of the notice and shall comply with subsection (b) of section 21-2,227, except that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(2) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) of this section may be waived in writing by a shareholder before or after the corporate action.

Source: Laws 2014, LB749, § 174.

21-2,175 Notice of intent to demand payment and consequences of voting or consenting.

(MBCA 13.21) (a) If a corporate action specified in subsection (a) of section 21-2,172 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in subsection (a) of section 21-2,172 is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or (b) of this section is not entitled to payment under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 175.

21-2,176 Appraisal notice and form.

(MBCA 13.22) (a) If a corporate action requiring appraisal rights under subsection (a) of section 21-2,172 becomes effective, the corporation must send a written appraisal notice and form required by subdivision (b)(1) of this section to all shareholders who satisfy the requirements of subsection (a) or (b) of section 21-2,175. In the case of a merger under section 21-2,165, the parent

must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be delivered no earlier than the date the corporate action specified in subsection (a) of section 21-2,172 became effective, and no later than ten days after such date, and must:

(1) Supply a form that (i) specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision (2)(ii) of this subsection;

(ii) A date by which the corporation must receive the form, which date may not be fewer than forty nor more than sixty days after the date the appraisal notice under subsection (a) of this section is sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) The corporation's estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholder so requesting within ten days after the date specified in subdivision (2)(ii) of this subsection, the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) The date by which the notice to withdraw under section 21-2,177 must be received, which date must be within twenty days after the date specified in subdivision (2)(ii) of this subsection; and

(3) Be accompanied by a copy of sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 176.

21-2,177 Perfection of rights; right to withdraw.

(MBCA 13.23) (a) A shareholder who receives notice pursuant to section 21-2,176 and who wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision (b)(2)(ii) of section 21-2,176. In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to subdivision (b)(1) of section 21-2,176. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 21-2,179. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) A shareholder who has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subdivision (b)(2)(v) of section 21-2,176. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection (b) of section 21-2,176, shall not be entitled to payment under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 177.

21-2,178 Payment.

(MBCA 13.24) (a) Except as provided in section 21-2,179, within thirty days after the form required by subdivision (b)(2)(ii) of section 21-2,176 is due, the corporation shall pay in cash to those shareholders who complied with subsection (a) of section 21-2,177 the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) of this section must be accompanied by:

(1)(i) The annual financial statements specified in subsection (a) of section 21-2,227 of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen months before the date of payment and shall comply with subsection (b) of section 21-2,227, except that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information, and (ii) the latest available quarterly financial statements of such corporation, if any;

(2) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to subdivision (b)(2)(iii) of section 21-2,176; and

(3) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under section 21-2,180 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under sections 21-2,171 to 21-2,183.

Source: Laws 2014, LB749, § 178.

21-2,179 After-acquired shares.

(MBCA 13.25) (a) A corporation may elect to withhold payment required by section 21-2,178 from any shareholder who was required to, but did not, certify that beneficial ownership of all the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision (b)(1) of section 21-2,176.

(b) If the corporation elected to withhold payment under subsection (a) of this section, it must, within thirty days after the form required by subdivision (b)(2)(ii) of section 21-2,176 is due, notify all shareholders who are described in subsection (a) of this section:

(1) Of the information required by subdivision (b)(1) of section 21-2,178;

(2) Of the corporation's estimate of fair value pursuant to subdivision (b)(2) of section 21-2,178;

(3) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 21-2,180;

(4) That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer; and

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under section 21-2,180 shall be deemed to have accepted the corporation's offer.

(c) Within ten days after receiving the shareholder's acceptance pursuant to subsection (b) of this section, the corporation must pay in cash the amount it offered under subdivision (b)(2) of this section to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within forty days after sending the notice described in subsection (b) of this section, the corporation must pay in cash the amount it offered to pay under subdivision (b)(2) of this section to each shareholder described in subdivision (b)(5) of this section.

Source: Laws 2014, LB749, § 179.

21-2,180 Procedure if shareholder dissatisfied with payment or offer.

(MBCA 13.26) (a) A shareholder paid pursuant to section 21-2,178 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under section 21-2,178. A shareholder offered payment under section 21-2,179 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) of this section within thirty days after receiving the corporation's payment or offer of payment under section 21-2,178 or 21-2,179, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

Source: Laws 2014, LB749, § 180.

SUBPART 3—JUDICIAL APPRAISAL OF SHARES

21-2,181 Court action.

(MBCA 13.30) (a) If a shareholder makes demand for payment under section 21-2,180 which remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 21-2,180 plus interest.

(b) The corporation shall commence the proceeding in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment (1) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (2) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 21-2,179.

Source: Laws 2014, LB749, § 181.

21-2,182 Court costs and expenses.

(MBCA 13.31) (a) The court in an appraisal proceeding commenced under section 21-2,181 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts which the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-2,171 to 21-2,183.

(b) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 21-2,174, 21-2,176, 21-2,178, or 21-2,179; or

(2) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by sections 21-2,171 to 21-2,183.

(c) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that such expenses should not be assessed against the corporation,

the court may direct that such expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to section 21-2,178, 21-2,179, or 21-2,180, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

Source: Laws 2014, LB749, § 182.

SUBPART 4—OTHER REMEDIES

21-2,183 Other remedies limited.

(MBCA 13.40) (a) The legality of a proposed or completed corporate action described in subsection (a) of section 21-2,172 may not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section does not apply to a corporate action that:

(1) Was not authorized and approved in accordance with the applicable provisions of:

(i) Sections 21-2,125 to 21-2,170;

(ii) The articles of incorporation or bylaws; or

(iii) The resolution of the board of directors authorizing the corporate action;

(2) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(3) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 21-2,122 and has been approved by the shareholders in the same manner as is provided in section 21-2,123 as if the interested transaction were a director's conflicting interest transaction; or

(4) Is approved by less than unanimous consent of the voting shareholders pursuant to section 21-256 if:

(i) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected; and

(ii) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

Source: Laws 2014, LB749, § 183.

PART 14—DISSOLUTION

SUBPART 1—VOLUNTARY DISSOLUTION

21-2,184 Dissolution by incorporators or initial directors.

(MBCA 14.01) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) Either (i) that none of the corporation's shares has been issued or (ii) that the corporation has not commenced business;
- (4) That no debt of the corporation remains unpaid;
- (5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) That a majority of the incorporators or initial directors authorized the dissolution.

Source: Laws 2014, LB749, § 184.

21-2,185 Dissolution by board of directors and shareholders.

(MBCA 14.02) (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) section 21-2,101 applies. If either subdivision (1)(i) or (ii) of this subsection applies, it must communicate the basis for so proceeding; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

Source: Laws 2014, LB749, § 185.

21-2,186 Articles of dissolution.

(MBCA 14.03) (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

- (1) The name of the corporation;
- (2) The date dissolution was authorized; and

(3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and by the articles of incorporation.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of sections 21-2,184 to 21-2,192, dissolved corporation means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Source: Laws 2014, LB749, § 186.

21-2,187 Revocation of dissolution.

(MBCA 14.04) (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If shareholder action was required to revoke the dissolution, the information required by subdivision (a)(3) of section 21-2,186.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Source: Laws 2014, LB749, § 187.

21-2,188 Effect of dissolution.

(MBCA 14.05) (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets;

(2) Disposing of its properties that will not be distributed in kind to its shareholders;

(3) Discharging or making provision for discharging its liabilities;

(4) Distributing its remaining property among its shareholders according to their interests; and

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;

(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(3) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-284 to 21-2,124;

(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(7) Terminate the authority of the registered agent of the corporation.

Source: Laws 2014, LB749, § 188.

21-2,189 Known claims against dissolved corporation.

(MBCA 14.06) (a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty days after the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days after the effective date of the rejection notice.

(d) For purposes of this section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: Laws 2014, LB749, § 189.

21-2,190 Other claims against dissolved corporation.

(MBCA 14.07) (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:

(1) A claimant who was not given written notice under section 21-2,189;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by subsection (b) of section 21-2,189 or subsection (c) of this section may be enforced:

(1) Against the dissolved corporation to the extent of its undistributed assets; or

(2) Except as provided in subsection (d) of section 21-2,191, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

Source: Laws 2014, LB749, § 190.

21-2,191 Court proceedings.

(MBCA 14.08) (a) A dissolved corporation that has published a notice under section 21-2,190 may file an application with the district court of the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (c) of section 21-2,190.

(b) Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section.

The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

Source: Laws 2014, LB749, § 191.

21-2,192 Director duties.

(MBCA 14.09) (a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under section 21-2,189, 21-2,190, or 21-2,191 shall not be liable for breach of subsection (a) of this section with respect to claims against the dissolved corporation that are barred or satisfied under section 21-2,189, 21-2,190, or 21-2,191.

Source: Laws 2014, LB749, § 192.

SUBPART 2—ADMINISTRATIVE DISSOLUTION

21-2,193 Grounds for administrative dissolution.

(MBCA 14.20) The Secretary of State may commence a proceeding under section 21-2,194 to administratively dissolve a corporation if:

(1) The corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(3) The corporation's period of duration stated in its articles of incorporation expires.

Source: Laws 2014, LB749, § 193.

21-2,194 Procedure for and effect of administrative dissolution.

(MBCA 14.21) (a) If the Secretary of State determines that one or more grounds exist under section 21-2,193 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of such determination under section 21-236.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-236, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-236.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 21-2,188 and notify claimants under sections 21-2,189 and 21-2,190.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Source: Laws 2014, LB749, § 194.

21-2,195 Reinstatement following administrative dissolution.

(MBCA 14.22) (a) A corporation administratively dissolved under section 21-2,194 may apply to the Secretary of State for reinstatement within five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-230.

(b) If the Secretary of State determines (1) that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct and (2) that the corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites such determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(c) A corporation that has been administratively dissolved under section 21-2,194 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of section 21-230;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct and (2) that the corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of late reinstatement that recites such determination and the effective date of reinstatement.

ment, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(e) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Source: Laws 2014, LB749, § 195; Laws 2015, LB279, § 4.

21-2,196 Appeal from denial of reinstatement.

(MBCA 14.23) (a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation under section 21-236 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 196.

SUBPART 3—JUDICIAL DISSOLUTION

21-2,197 Grounds for judicial dissolution.

(MBCA 14.30) (a) Except as provided in subdivision (2)(ii) of this subsection, the court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2)(i) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted; and

(ii) The right to bring a proceeding under this subdivision does not apply to shareholders of a bank, trust company, or stock-owned savings and loan association;

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(5) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Subdivision (a)(2) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are:

(1) A covered security under section (18)(b)(1)(A) or (B) of the Securities Act of 1933, as amended; or

(2) Not a covered security, but are held by at least three hundred shareholders and the shares outstanding have a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, beneficial shareholders, and voting trust beneficial owners owning more than ten percent of such shares.

(c) In subsection (a) of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; in subsection (b) of this section, shareholder means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

Source: Laws 2014, LB749, § 197; Laws 2017, LB35, § 24.

21-2,198 Procedure for judicial dissolution.

(MBCA 14.31) (a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the district court of Lancaster County. Venue for a proceeding brought by any other party named in subsection (a) of section 21-2,197 lies in the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten days of the commencement of a proceeding to dissolve a corporation under subdivision (a)(2) of section 21-2,197, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 21-2,201 and accompanied by a copy of section 21-2,201.

Source: Laws 2014, LB749, § 198.

21-2,199 Receivership or custodianship.

(MBCA 14.32) (a) Unless an election to purchase has been filed under section 21-2,201, a court in a judicial proceeding brought to dissolve a corporation may

appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in his or her own name as receiver of the corporation in all courts of this state; and

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

Source: Laws 2014, LB749, § 199.

21-2,200 Decree of dissolution.

(MBCA 14.33) (a) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 21-2,197 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with section 21-2,188 and the notification of claimants in accordance with sections 21-2,189 and 21-2,190.

Source: Laws 2014, LB749, § 200.

21-2,201 Election to purchase in lieu of dissolution.

(MBCA 14.34) (a) In a proceeding under subdivision (a)(2) of section 21-2,197 to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (a)(2) of section 21-2,197 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (a)(2) of section 21-2,197 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the proceedings under subdivision (a)(2) of section 21-2,197 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (a)(2) of section 21-2,197 was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature, and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision (a)(2)(i)(B) or (D) of section 21-2,197, it may award expenses to the petitioning shareholder.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under subdivision (a)(2) of section 21-2,197, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section shall be made within ten days after the date the order becomes final.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of expenses pursuant to subsection (e) of this section, is subject to the provisions of section 21-252.

Source: Laws 2014, LB749, § 201; Laws 2017, LB35, § 25.

SUBPART 4—MISCELLANEOUS

21-2,202 Deposit with State Treasurer.

(MBCA 14.40) Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay such person or his or her representative that amount in accordance with the act.

Source: Laws 2014, LB749, § 202.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

PART 15—FOREIGN CORPORATIONS

SUBPART 1—CERTIFICATE OF AUTHORITY

21-2,203 Authority to transact business required.

(MBCA 15.01) (a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(11) Transacting business in interstate commerce; or

(12) Acting as a foreign corporate trustee to the extent authorized under section 30-3820.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) The requirements of the Nebraska Model Business Corporation Act are not applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Source: Laws 2014, LB749, § 203.

21-2,204 Consequences of transacting business without authority.

(MBCA 15.02) (a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection and shall remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Source: Laws 2014, LB749, § 204.

21-2,205 Application for certificate of authority.

(MBCA 15.03) (a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-2,208;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address; and

(6) The names and street addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is delivered.

Source: Laws 2014, LB749, § 205.

21-2,206 Amended certificate of authority.

(MBCA 15.04) (a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of section 21-2,205 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Source: Laws 2014, LB749, § 206.

21-2,207 Effect of certificate of authority.

(MBCA 15.05) (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Nebraska Model Business Corporation Act.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as and, except as otherwise provided by the Nebraska Model Business Corporation Act, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(c) The Nebraska Model Business Corporation Act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source: Laws 2014, LB749, § 207.

21-2,208 Corporate name of foreign corporation.

(MBCA 15.06) (a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-230, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add to its corporate name for use in this state the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd.; or

(2) 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 must not be deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-231 or 21-232;

(3) The fictitious name of another foreign corporation authorized to transact business in this state;

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(5) A trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(6) Any other business entity name registered or filed with the Secretary of State pursuant to the law of this state.

(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 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 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:

(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 corporate 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 21-230, it may not transact business in this state under the changed

name until it adopts a name satisfying the requirements of section 21-230 and obtains an amended certificate of authority under section 21-2,206.

Source: Laws 2014, LB749, § 208.

21-2,209 Registered office and registered agent of foreign corporation.

(MBCA 15.07) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Source: Laws 2014, LB749, § 209.

21-2,210 Change of registered office or registered agent of foreign corporation.

(MBCA 15.08) (a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's business office changes, the agent may change the street address or post office box number of the registered office of any foreign corporation for which the person is the registered agent by notifying the corporation in writing of the change, and signing and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 2014, LB749, § 210.

21-2,211 Resignation of registered agent of foreign corporation.

(MBCA 15.09) (a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the Secretary of State for

filing the signed original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent biennial report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source: Laws 2014, LB749, § 211.

21-2,212 Service on foreign corporation.

(MBCA 15.10) (a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process also consents to service of process directed to the foreign corporation's agent in this state for a search warrant issued pursuant to sections 29-812 to 29-821, or for any other validly issued and properly served court order or subpoena, including those authorized under sections 86-2,106 and 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a court order, subpoena, or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the court order, subpoena, or search warrant is sought.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-2,213; or

(3) Has had its certificate of authority revoked under section 21-2,218.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Source: Laws 2014, LB749, § 212; Laws 2015, LB294, § 6.

SUBPART 2—WITHDRAWAL OR TRANSFER OF AUTHORITY

21-2,213 Withdrawal of foreign corporation.

(MBCA 15.20) (a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such corporation outside this state; and

(4) A mailing address at which process against the corporation may be served.

Source: Laws 2014, LB749, § 213.

21-2,214 Automatic withdrawal upon certain conversions.

(MBCA 15.21) A foreign corporation authorized to transact business in this state that converts to a domestic nonprofit corporation or any form of domestic filing entity shall be deemed to have withdrawn on the effective date of the conversion.

Source: Laws 2014, LB749, § 214.

21-2,215 Withdrawal upon conversion to a nonfiling entity.

(MBCA 15.22) (a) A foreign corporation authorized to transact business in this state that converts to a domestic or foreign nonfiling entity shall apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it was incorporated before the conversion;

(2) That it surrenders its authority to transact business in this state as a foreign corporation;

(3) The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and

(4) If it has been converted to a foreign unincorporated entity:

(i) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such foreign unincorporated entity outside this state; and

(ii) A mailing address at which process against the foreign unincorporated entity may be served.

(b) After the withdrawal under this section of a corporation that has converted to a domestic unincorporated entity is effective, service of process shall be made on the unincorporated entity in accordance with the regular procedures for service of process on the form of unincorporated entity to which the corporation was converted.

Source: Laws 2014, LB749, § 215.

21-2,216 Transfer of authority.

(MBCA 15.23) (a) A foreign business corporation authorized to transact business in this state that converts to a foreign nonprofit corporation or to any form of foreign unincorporated entity that is required to obtain a certificate of authority or make a similar type of filing with the Secretary of State if it transacts business in this state shall file with the Secretary of State an application for transfer of authority signed by any officer or other duly authorized representative. The application shall set forth:

(1) The name of the corporation;

(2) The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and

(3) Any other information that would be required in a filing under the laws of this state by an unincorporated entity of the type the corporation has become seeking authority to transact business in this state.

(b) The application for transfer of authority shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206.

(c) Upon the effectiveness of the application for transfer of authority, the authority of the corporation under sections 21-2,203 to 21-2,220 to transact business in this state shall be transferred without interruption to the converted entity which shall thereafter hold such authority subject to the provisions of the laws of this state applicable to that type of unincorporated entity.

Source: Laws 2014, LB749, § 216.

SUBPART 3—REVOCATION OF CERTIFICATE OF AUTHORITY

21-2,217 Grounds for revocation.

(MBCA 15.30) The Secretary of State may commence a proceeding under section 21-2,218 to administratively revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign corporation does not inform the Secretary of State under section 21-2,210 or 21-2,211 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(4) The foreign corporation or its agent for service of process does not comply with section 21-2,212; or

(5) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Source: Laws 2014, LB749, § 217.

21-2,218 Procedure for and effect of revocation.

(MBCA 15.31) (a) If the Secretary of State determines that one or more grounds exist under section 21-2,217 for revocation of a certificate of authority, the Secretary of State shall serve the foreign corporation with written notice of such determination under section 21-2,212.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-2,212, the Secretary of State shall administratively revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-2,212.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Source: Laws 2014, LB749, § 218.

21-2,219 Foreign corporation; reinstatement.

(a) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208.

(b) If the Secretary of State determines (1) that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct and (2) that the foreign corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(c) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-2,218 for more than five years, may

apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-205, must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines (1) that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct and (2) that the foreign corporation has paid to the Secretary of State all delinquent fees and has delivered to the Secretary of State a properly executed and signed biennial report, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(e) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Source: Laws 2014, LB749, § 219; Laws 2015, LB279, § 5.

21-2,220 Appeal from revocation.

(MBCA 15.32) (a) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation of its certificate of authority under section 21-2,218, he or she shall serve the foreign corporation under section 21-2,212 with a written notice that explains the reason or reasons for denial.

(b) A foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-2,212. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 2014, LB749, § 220.

SUBPART 4—FOREIGN CORPORATION DOMESTICATION

21-2,220.01 Foreign corporation; domestication; procedure.

In lieu of compliance with section 21-2,203, relating to the authorization of foreign corporations to transact business in this state, any corporation orga-

nized under the laws of any other state or states which has heretofore filed, or which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Model Business Corporation Act with respect to its property and business operations within this state shall become and be a body corporate of this state as a foreign domesticated corporation. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Source: Laws 2016, LB794, § 11.

21-2,220.02 Foreign corporation; cessation of domestication.

Any foreign corporation which has domesticated pursuant to section 21-2,220.01 may cease to be a foreign domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-2,220.01.

Source: Laws 2016, LB794, § 12.

21-2,220.03 Foreign corporation; surrender of foreign charter; effect.

If a foreign corporation which has domesticated pursuant to section 21-2,220.01 surrenders its foreign corporate charter, and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-219, 21-220, and 21-2,229, such foreign domesticated corporation shall thereupon become and be a domestic corporation organized under the Nebraska Model Business Corporation Act.

Source: Laws 2016, LB794, § 13.

21-2,220.04 Foreign corporation; domesticated under prior law; status.

Any corporation organized under the laws of any other state which had become, prior to January 1, 2017, a body corporate of this state as a foreign domesticated corporation, shall retain such status for all purposes.

Source: Laws 2016, LB794, § 14.

PART 16—RECORDS AND REPORTS

SUBPART 1—RECORDS

21-2,221 Corporate records.

(MBCA 16.01) (a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record

of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in the form of a document, including an electronic record or in another form capable of conversion into paper form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in subdivision (k)(5) of section 21-203 regarding facts on which a filed document is dependent;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past three years;

(5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 21-2,227;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent biennial report delivered to the Secretary of State under section 21-2,228.

Source: Laws 2014, LB749, § 221.

21-2,222 Inspection of records by shareholders.

(MBCA 16.02) (a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e) of section 21-2,221 if the shareholder gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(b) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made such information generally available to shareholders by posting it on its web site or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

(c) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (d) of this section and gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(d) A shareholder may inspect and copy the records described in subsection (c) of this section only if:

(1) The shareholder's demand is made in good faith and for a proper purpose;

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) The records are directly connected with the shareholder's purpose.

(e) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(f) This section does not affect:

(1) The right of a shareholder to inspect records under section 21-262 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of the Nebraska Model Business Corporation Act, to compel the production of corporate records for examination.

(g) For purposes of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Source: Laws 2014, LB749, § 222; Laws 2017, LB35, § 26.

21-2,223 Scope of inspection right.

(MBCA 16.03) (a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under section 21-2,222 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under subdivision (c)(3) of section 21-2,222 by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder.

The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

Source: Laws 2014, LB749, § 223.

21-2,224 Court-ordered inspection.

(MBCA 16.04) (a) If a corporation does not allow a shareholder who complies with subsection (a) of section 21-2,222 to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (c) and (d) of section 21-2,222 may apply to the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

Source: Laws 2014, LB749, § 224.

21-2,225 Inspection of records by directors.

(MBCA 16.05) (a) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and provisions prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and the court may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

Source: Laws 2014, LB749, § 225.

21-2,226 Exception to notice requirements.

(MBCA 16.06) (a) Whenever notice would otherwise be required to be given under any provision of the Nebraska Model Business Corporation Act to a shareholder, such notice need not be given if:

(1) Notices to shareholders of two consecutive annual meetings and all notices of meetings during the period between such two consecutive annual meetings have been sent to such shareholder at such shareholder's address as

shown on the records of the corporation and have been returned undeliverable or could not be delivered; or

(2) All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

Source: Laws 2014, LB749, § 226.

SUBPART 2—REPORTS

21-2,227 Financial statements for shareholders.

(MBCA 16.20) (a) A corporation shall deliver to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) Within one hundred twenty days after the close of each fiscal year, the corporation shall send the annual financial statements to each shareholder. Thereafter, on written request from a shareholder to whom the statements were not sent, the corporation shall send the shareholder the latest financial statements. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

Source: Laws 2014, LB749, § 227.

21-2,228 Biennial report for Secretary of State.

(MBCA 16.21) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report as required under section 21-301 or 21-304.

Source: Laws 2014, LB749, § 228.

21-2,229 Notice of incorporation, amendment, merger, or share exchange; notice of dissolution.

(a) Notice of incorporation, amendment, merger, or share exchange of a domestic corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

A notice of incorporation shall show (1) the corporate name for the corporation, (2) the number of shares the corporation is authorized to issue, (3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, and (4) the name and street address of each incorporator.

A brief resume of any amendment, merger, or share exchange of the corporation shall be published in the same manner and for the same period of time as a notice of incorporation is required to be published.

(b) Notice of the dissolution of a domestic corporation and the terms and conditions of such dissolution and the names of the persons who are to wind up and liquidate its business and affairs and their official titles with a statement of assets and liabilities of the corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is located.

(c) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given but is subsequently published for the required time and proof of the publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

Source: Laws 2014, LB749, § 229.

PART 17—TRANSITION PROVISIONS**21-2,230 Application to existing domestic corporations.**

(MBCA 17.01) The Nebraska Model Business Corporation Act applies to all domestic corporations in existence on January 1, 2017, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source: Laws 2014, LB749, § 230; Laws 2015, LB157, § 8.

21-2,231 Application to qualified foreign corporations.

(MBCA 17.02) A foreign corporation authorized to transact business in this state on January 1, 2017, is subject to the Nebraska Model Business Corporation Act but is not required to obtain a new certificate of authority to transact business under the act.

Source: Laws 2014, LB749, § 231; Laws 2015, LB157, § 9.

21-2,232 Saving provisions.

(MBCA 17.03) (a) Except as provided in subsection (b) of this section, the repeal of a statute by Laws 2014, LB749, does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
 - (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
 - (3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or
 - (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.
- (b) If a penalty or punishment imposed for violation of a statute repealed by Laws 2014, LB749, is reduced by Laws 2014, LB749, the penalty or punishment if not already imposed shall be imposed in accordance with Laws 2014, LB749.
- (c) In the event that any provisions of the Nebraska Model Business Corporation Act are deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on January 1, 2014, the provisions of the Nebraska Model Business Corporation Act shall control to the maximum extent permitted by section 102(a)(2) of that federal act, 15 U.S.C. 7002(a)(2).

Source: Laws 2014, LB749, § 232.

**ARTICLE 3
OCCUPATION TAX**

- | | |
|------------|--------------------------------------------------------------------------------------------------------------------------|
| Section | |
| 21-301. | Domestic corporations; biennial report and occupation tax; procedure. |
| 21-302. | Domestic corporations; biennial report; contents. |
| 21-303. | Corporations; occupation tax; amount; stock without par value, determination of amount. |
| 21-304. | Foreign corporations; biennial report and occupation tax; procedure. |
| 21-305. | Foreign corporations; biennial report; contents. |
| 21-306. | Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes. |
| 21-311. | Occupation taxes; disposition; monthly report of Secretary of State. |
| 21-312. | Occupation taxes; lien; notice; lien subject to prior liens. |
| 21-313. | Domestic corporation; foreign corporation; failure to file report or pay occupation tax; effect. |
| 21-314. | Occupation taxes; how collected; credited to General Fund. |
| 21-315. | Occupation taxes; collection; venue of action. |
| 21-317. | Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10. |
| 21-318. | List of corporations; duty of Secretary of State. |
| 21-319. | Investigation by Secretary of State for collection purposes; duty of county clerk. |
| 21-321. | Reports and fees; exemptions. |
| 21-322. | Dissolution; certificate required; filing; fees. |
| 21-323. | Domestic corporations; reports and taxes; notice; failure to pay; administrative dissolution; lien; priority. |
| 21-323.01. | Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required. |
| 21-323.02. | Domestic corporation administratively dissolved; denial of reinstatement; appeal. |
| 21-325. | Foreign corporations; reports and taxes; notice; failure to pay; authority to transact business revoked; lien; priority. |
| 21-325.01. | Foreign corporation authority to transact business revoked; reinstatement; procedure. |
| 21-325.02. | Foreign corporation authority to transact business; reinstatement denied; appeal. |

Section	
21-328.	Occupation tax; refund; procedure; appeal.
21-329.	Paid-up capital stock, defined.
21-330.	Corporations; excess payment; refund.

21-301 Domestic corporations; biennial report and occupation tax; procedure.

(1) Each domestic corporation subject to the Nebraska Model Business Corporation Act shall deliver a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and occupation tax shall be delivered to the Secretary of State. The report and occupation tax shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and occupation tax conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or occupation tax does not conform, the Secretary of State shall not file the report or accept the occupation tax but shall return the report and occupation tax to the corporation for any necessary corrections. A correction or amendment to the report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and occupation tax as described in this section have not been received as of March 1. The notice shall state that the report has not been received, that the report and occupation tax are due on March 1, and that the corporation will be administratively dissolved if the report and proper occupation tax are not received by April 15.

Source: Laws 1913, c. 240, § 1, p. 745; R.S.1913, § 761; C.S.1922, § 679; C.S.1929, § 24-1701; R.S.1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1; Laws 2008, LB379, § 1; Laws 2014, LB749, § 238.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation shall show:

- (1) The exact corporate name of the corporation;
- (2) The street address of the corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of the corporation's principal office;
- (4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;
- (5) A brief description of the nature of the corporation's business;

(6) The amount of paid-up capital stock; and

(7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2; Laws 2008, LB379, § 2; Laws 2014, LB749, § 239.

21-303 Corporations; occupation tax; amount; stock without par value, determination of amount.

(1) Upon the delivery of the biennial report required under section 21-301 to the Secretary of State, it shall be the duty of every corporation for profit, registered in the office of the Secretary of State on January 1, whether incorporated under the laws of this state or incorporated under the laws of any other state when such corporations have domesticated in this state pursuant to section 21-2,220.01, to pay to the Secretary of State an occupation tax in each even-numbered calendar year beginning January 1, which occupation tax shall be due and assessable on such date and delinquent if not paid on or before April 15 of each even-numbered year.

(2) The occupation tax shall be as follows: When the paid-up capital stock of a corporation does not exceed ten thousand dollars, an occupation tax of twenty-six dollars; when such paid-up capital stock exceeds ten thousand dollars but does not exceed twenty thousand dollars, an occupation tax of forty dollars; when such paid-up capital stock exceeds twenty thousand dollars but does not exceed thirty thousand dollars, an occupation tax of sixty dollars; when such paid-up capital stock exceeds thirty thousand dollars but does not exceed forty thousand dollars, an occupation tax of eighty dollars; when such paid-up capital stock exceeds forty thousand dollars but does not exceed fifty thousand dollars, an occupation tax of one hundred dollars; when such paid-up capital stock exceeds fifty thousand dollars but does not exceed sixty thousand dollars, an occupation tax of one hundred twenty dollars; when such paid-up capital stock exceeds sixty thousand dollars but does not exceed seventy thousand dollars, an occupation tax of one hundred forty dollars; when such paid-up capital stock exceeds seventy thousand dollars but does not exceed eighty thousand dollars, an occupation tax of one hundred sixty dollars; when such paid-up capital stock exceeds eighty thousand dollars but does not exceed ninety thousand dollars, an occupation tax of one hundred eighty dollars; when such paid-up capital stock exceeds ninety thousand dollars but does not exceed one hundred thousand dollars, an occupation tax of two hundred dollars; when such paid-up capital stock exceeds one hundred thousand dollars but does not exceed one hundred twenty-five thousand dollars, an occupation tax of two hundred forty dollars; when such paid-up capital stock exceeds one hundred twenty-five thousand dollars but does not exceed one hundred fifty thousand dollars, an occupation tax of two hundred eighty dollars; when such paid-up capital stock exceeds one hundred fifty thousand dollars but does not exceed one hundred seventy-five thousand dollars, an occupation tax of three hundred twenty dollars; when such paid-up capital stock exceeds one hundred seventy-five thousand dollars but does not exceed two hundred thousand dollars, an occupation tax of three hundred sixty dollars; when such paid-up capital stock exceeds two hundred thousand dollars but does not exceed two hundred

twenty-five thousand dollars, an occupation tax of four hundred dollars; when such paid-up capital stock exceeds two hundred twenty-five thousand dollars but does not exceed two hundred fifty thousand dollars, an occupation tax of four hundred forty dollars; when such paid-up capital stock exceeds two hundred fifty thousand dollars but does not exceed two hundred seventy-five thousand dollars, an occupation tax of four hundred eighty dollars; when such paid-up capital stock exceeds two hundred seventy-five thousand dollars but does not exceed three hundred thousand dollars, an occupation tax of five hundred twenty dollars; when such paid-up capital stock exceeds three hundred thousand dollars but does not exceed three hundred twenty-five thousand dollars, an occupation tax of five hundred sixty dollars; when such paid-up capital stock exceeds three hundred twenty-five thousand dollars but does not exceed three hundred fifty thousand dollars, an occupation tax of six hundred dollars; when such paid-up capital stock exceeds three hundred fifty thousand dollars but does not exceed four hundred thousand dollars, an occupation tax of six hundred sixty-six dollars; when such paid-up capital stock exceeds four hundred thousand dollars but does not exceed four hundred fifty thousand dollars, an occupation tax of seven hundred thirty dollars; when such paid-up capital stock exceeds four hundred fifty thousand dollars but does not exceed five hundred thousand dollars, an occupation tax of eight hundred dollars; when such paid-up capital stock exceeds five hundred thousand dollars but does not exceed six hundred thousand dollars, an occupation tax of nine hundred ten dollars; when such paid-up capital stock exceeds six hundred thousand dollars but does not exceed seven hundred thousand dollars, an occupation tax of one thousand ten dollars; when such paid-up capital stock exceeds seven hundred thousand dollars but does not exceed eight hundred thousand dollars, an occupation tax of one thousand one hundred twenty dollars; when such paid-up capital stock exceeds eight hundred thousand dollars but does not exceed nine hundred thousand dollars, an occupation tax of one thousand two hundred thirty dollars; when such paid-up capital stock exceeds nine hundred thousand dollars but does not exceed one million dollars, an occupation tax of one thousand three hundred thirty dollars; when such paid-up capital stock exceeds one million dollars but does not exceed ten million dollars, an occupation tax of one thousand three hundred thirty dollars, and eight hundred dollars additional for each million or fraction thereof over and above one million dollars; when such paid-up capital stock exceeds ten million dollars but does not exceed fifteen million dollars, an occupation tax of twelve thousand dollars; when such paid-up capital stock exceeds fifteen million dollars but does not exceed twenty million dollars, an occupation tax of fourteen thousand six hundred sixty dollars; when such paid-up capital stock exceeds twenty million dollars but does not exceed twenty-five million dollars, an occupation tax of seventeen thousand three hundred thirty dollars; when such paid-up capital stock exceeds twenty-five million dollars but does not exceed fifty million dollars, an occupation tax of twenty thousand six hundred sixty dollars; when such paid-up capital stock exceeds fifty million dollars but does not exceed one hundred million dollars, an occupation tax of twenty-one thousand three hundred thirty dollars; and when such paid-up capital stock exceeds one hundred million dollars, an occupation tax of twenty-three thousand nine hundred ninety dollars. The minimum occupation tax for filing such report shall be twenty-six dollars. For purposes of determining the occupation tax, the stock of corporations incorporated under the laws of any other state, which corporations have domesticated in this state pursuant to section

21-2,220.01 and which stock is without par value, shall be deemed to have a par value of an amount equal to the amount paid in as capital for such shares at the time of the issuance thereof.

Source: Laws 1913, c. 240, § 3, p. 745; R.S.1913, § 763; C.S.1922, § 681; C.S.1929, § 24-1703; R.S.1943, § 21-303; Laws 1947, c. 55, § 1, p. 185; Laws 1955, c. 63, § 2, p. 200; Laws 1965, c. 87, § 1, p. 350; Laws 1967, c. 101, § 3, p. 310; Laws 1969, c. 124, § 2, p. 568; Laws 1982, LB 928, § 7; Laws 1992, LB 719A, § 90; Laws 2003, LB 524, § 3; Laws 2014, LB749, § 240; Laws 2016, LB794, § 15.

21-304 Foreign corporations; biennial report and occupation tax; procedure.

(1) Each foreign corporation subject to the Nebraska Model Business Corporation Act, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, deliver a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and occupation tax shall be delivered to the Secretary of State. The report and occupation tax shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and occupation tax conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or occupation tax does not conform, the Secretary of State shall not file the report or accept the occupation tax but shall return the report and occupation tax to the corporation for any necessary corrections. A correction or amendment to the report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and occupation tax as described in this section have not been received as of March 1. The notice shall state that the report has not been received, that the report and occupation tax are due on March 1, and that the authority of the corporation to transact business in this state will be administratively revoked if the report and proper occupation tax are not received by April 15 of each even-numbered year.

Source: Laws 1913, c. 240, § 4, p. 748; R.S.1913, § 764; C.S.1922, § 682; C.S.1929, § 24-1704; R.S.1943, § 21-304; Laws 1955, c. 63, § 3, p. 203; Laws 1967, c. 101, § 4, p. 313; Laws 1969, c. 124, § 3, p. 571; Laws 1982, LB 928, § 8; Laws 2002, LB 989, § 2; Laws 2003, LB 524, § 4; Laws 2006, LB 647, § 2; Laws 2008, LB379, § 3; Laws 2014, LB749, § 241.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation shall show:

(1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) The street address of the foreign corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of the foreign corporation's principal office;

(4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the foreign corporation's business;

(6) The value of the property owned and used by the foreign corporation in this state and where such property is situated; and

(7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5, p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5; Laws 2008, LB379, § 4; Laws 2014, LB749, § 242.

21-306 Foreign corporations; occupation tax; investigation by Secretary of State for collection purposes.

Upon the delivery of the biennial report required under section 21-304 to the Secretary of State, it shall be the duty of every foreign corporation doing business in this state to pay to the Secretary of State an occupation tax each even-numbered calendar year beginning January 1 and become due and assessable on March 1 of that year and become delinquent if not paid by April 15 of each even-numbered year. The occupation tax shall be measured by the property employed by the foreign corporation in the conduct of its business in this state. For such purpose the property shall consist of the sum total of the actual value of all real estate and personal property employed in this state by such foreign corporation in the transaction of its business. The occupation tax to be paid by such foreign corporation shall be based upon the sum so determined and shall be considered the capital stock of such foreign corporation in this state for the purpose of the occupation tax. The schedule of payment shall be double the occupation tax set forth in section 21-303, or any amendments thereto, except that the occupation tax shall not exceed thirty thousand dollars, and the Secretary of State, or any person deputized by the Secretary of State, shall have authority to investigate and obtain information from such corporation or any state, county, or city official. Such officers are authorized by this section to furnish such information to the Secretary of State, or anyone deputized by the Secretary of State, in order to determine all facts and give effect to the collection of the occupation tax.

Source: Laws 1913, c. 240, § 6, p. 749; R.S.1913, § 766; C.S.1922, § 684; C.S.1929, § 24-1706; Laws 1933, c. 32, § 1, p. 212; Laws 1935, c. 47, § 1, p. 172; C.S.Supp.,1941, § 24-1706; R.S.1943, § 21-306; Laws 1955, c. 63, § 4, p. 203; Laws 1965, c. 87, § 2, p. 353; Laws 1967, c. 101, § 6, p. 313; Laws 1969, c. 124, § 4, p. 571; Laws 1982, LB 928, § 9; Laws 2002, LB 989, § 3; Laws 2003, LB 524, § 6; Laws 2014, LB749, § 243.

21-311 Occupation taxes; disposition; monthly report of Secretary of State.

The Secretary of State shall make a report monthly to the Tax Commissioner of the occupation taxes collected under sections 21-301 to 21-330 and remit them to the State Treasurer for credit to the General Fund. The report shall include the amount of any refunds paid out under section 21-328.

Source: Laws 1913, c. 240, § 11, p. 750; R.S.1913, § 771; C.S.1922, § 689; C.S.1929, § 24-1711; R.S.1943, § 21-311; Laws 1984, LB 799, § 2; Laws 2003, LB 524, § 7; Laws 2014, LB749, § 244.

21-312 Occupation taxes; lien; notice; lien subject to prior liens.

The occupation taxes required to be paid by sections 21-301 to 21-330 shall be the first and best lien on all property of the corporation whether such real or personal property is employed by the corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof. The Secretary of State may file notice of such lien in the office of the county clerk of the county wherein the personal property sought to be charged with such lien is situated and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated. The lien provided for in this section shall be invalid as to any mortgagee or pledgee whose lien is filed, as against any judgment lien which attached, or as against any purchaser whose rights accrued, prior to the filing of such notice.

Source: Laws 1913, c. 240, § 12, p. 750; R.S.1913, § 772; C.S.1922, § 690; C.S.1929, § 24-1712; Laws 1943, c. 54, § 1, p. 218; R.S.1943, § 21-312; Laws 1969, c. 124, § 5, p. 572; Laws 1988, LB 800, § 1; Laws 2014, LB749, § 245.

21-313 Domestic corporation; foreign corporation; failure to file report or pay occupation tax; effect.

(1) If a domestic corporation required to deliver the biennial report and pay the occupation tax prescribed in sections 21-301 to 21-330 fails or neglects to deliver such report or pay such occupation tax by April 15 of each even-numbered year, such corporation shall be administratively dissolved on April 16 of such year.

(2) If a foreign corporation required to deliver the biennial report and pay the occupation tax prescribed in sections 21-301 to 21-330 fails or neglects to deliver such report or pay such occupation tax by April 15 of each even-numbered year, the authority of such corporation to transact business in this state shall be administratively revoked on April 16 of such year.

Source: Laws 1913, c. 240, § 13, p. 750; R.S.1913, § 773; C.S.1922, § 691; C.S.1929, § 24-1713; R.S.1943, § 21-313; Laws 1945, c. 39, § 1, p. 195; Laws 1955, c. 63, § 7, p. 204; Laws 1967, c. 101, § 9, p. 315; Laws 1969, c. 124, § 6, p. 572; Laws 1982, LB 928, § 10; Laws 2002, LB 989, § 4; Laws 2003, LB 524, § 8; Laws 2014, LB749, § 246.

21-314 Occupation taxes; how collected; credited to General Fund.

Occupation tax or taxes to be paid as provided in sections 21-301 to 21-330 may be recovered by an action in the name of the state and on collection shall be remitted to the State Treasurer for credit to the General Fund.

Source: Laws 1913, c. 240, § 14, p. 750; R.S.1913, § 774; C.S.1922, § 692; C.S.1929, § 24-1714; R.S.1943, § 21-314; Laws 1969, c. 124, § 7, p. 573; Laws 1988, LB 800, § 2; Laws 2003, LB 524, § 9; Laws 2014, LB749, § 247.

21-315 Occupation taxes; collection; venue of action.

The Attorney General, on request of the Secretary of State, shall institute such action to recover occupation taxes in the district court of Lancaster County or any other county in the state in which such corporation has an office or place of business.

Source: Laws 1913, c. 240, § 15, p. 750; R.S.1913, § 775; C.S.1922, § 693; C.S.1929, § 24-1715; R.S.1943, § 21-315; Laws 2014, LB749, § 248.

21-317 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-318 List of corporations; duty of Secretary of State.

It shall be the duty of the Secretary of State to prepare and keep a correct list of all corporations subject to sections 21-301 to 21-330 and engaged in business within this state. For the purpose of obtaining the necessary information, the Secretary of State, or other person deputized by him or her, shall have access to the records of the offices of the county clerks of the state.

Source: Laws 1913, c. 240, § 18, p. 751; R.S.1913, § 778; C.S.1922, § 696; C.S.1929, § 24-1718; R.S.1943, § 21-318; Laws 1988, LB 800, § 3; Laws 2014, LB749, § 249.

21-319 Investigation by Secretary of State for collection purposes; duty of county clerk.

Any county clerk shall, upon request of the Secretary of State, furnish him or her with such information as is shown by the records of his or her office concerning corporations located within his or her county and subject to sections 21-301 to 21-330. The Secretary of State, or any person deputized by him or her for the purpose of determining the amount of the occupation tax due from such corporation, shall have authority to investigate and determine the facts showing the proportion of the paid-up capital stock of the company represented by its property and business in this state.

Source: Laws 1913, c. 240, § 19, p. 751; R.S.1913, § 779; C.S.1922, § 697; C.S.1929, § 24-1719; R.S.1943, § 21-319; Laws 1988, LB 800, § 4; Laws 2014, LB749, § 250.

21-321 Reports and fees; exemptions.

All banking, insurance, and building and loan association corporations paying fees and making reports to the Director of Insurance or the Director of Banking and Finance and all other corporations paying an occupation tax to

the state under any other statutory provisions than those of sections 21-301 to 21-330 shall be exempt from the provisions of such sections.

Source: Laws 1913, c. 240, § 21, p. 752; R.S.1913, § 781; C.S.1922, § 699; C.S.1929, § 24-1721; R.S.1943, § 21-321; Laws 1969, c. 124, § 8, p. 573; Laws 1988, LB 800, § 5; Laws 2003, LB 524, § 10; Laws 2014, LB749, § 251.

21-322 Dissolution; certificate required; filing; fees.

In case of dissolution of a corporation by action of a competent court, or the winding up of a corporation, either foreign or domestic, by proceedings in assignment or bankruptcy, a certificate shall be signed by the clerk of the court in which such proceedings were had and filed in the office of the Secretary of State. The fees for making and filing such certificate shall be taxed as costs in the proceedings and paid out of the funds of the corporation and shall have the same priority as other costs.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-322; Laws 1967, c. 101, § 11, p. 315; Laws 2014, LB749, § 252.

21-323 Domestic corporations; reports and taxes; notice; failure to pay; administrative dissolution; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-330 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed biennial report is due to be filed. If such occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the delinquent corporation shall be administratively dissolved on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and deliver the biennial report within the time limited by sections 21-301 to 21-330, the Secretary of State shall on April 16 of such year administratively dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall administratively dissolve a corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-236.

(b) A corporation administratively dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-2,188 and notify claimants under sections 21-2,189 and 21-2,190.

(c) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

(4) All delinquent occupation taxes of the corporation shall be a lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes.

(5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and fees due to or assessable by the state have been paid and the biennial report filed by such corporation.

Source: Laws 1913, c. 240, § 22, p. 752; R.S.1913, § 782; C.S.1922, § 700; C.S.1929, § 24-1722; Laws 1943, c. 54, § 2, p. 218; R.S.1943, § 21-323; Laws 1957, c. 242, § 10, p. 823; Laws 1967, c. 101, § 12, p. 316; Laws 1969, c. 124, § 9, p. 573; Laws 1971, LB 485, § 1; Laws 1982, LB 928, § 11; Laws 1995, LB 109, § 197; Laws 2002, LB 989, § 5; Laws 2003, LB 524, § 11; Laws 2014, LB749, § 253.

21-323.01 Domestic corporation administratively dissolved; reinstatement; application; procedure; payment required.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its automatic dissolution. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(c) A corporation that has been automatically dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its automatic dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-2028;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that an application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of late reinstatement that recites his or her determination and the effective date of the reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. A corporation administratively dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application for reinstatement contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(c) A corporation administratively dissolved under section 21-323 for more than five years may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) State that the corporation's name satisfies the requirements of section 21-230;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of dissolution, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-236.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

(f) A corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was administratively dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was administratively dissolved and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was administratively dissolved.

Source: Laws 1995, LB 109, § 198; Laws 1996, LB 1036, § 1; Laws 2003, LB 524, § 12; Laws 2012, LB854, § 2; Laws 2014, LB749, § 254; Laws 2015, LB279, § 6.

21-323.02 Domestic corporation administratively dissolved; denial of reinstatement; appeal.

(1) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution under section 21-323, he or she shall serve the corporation under section 21-236 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-236. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the

Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1995, LB 109, § 199; Laws 2014, LB749, § 255.

21-325 Foreign corporations; reports and taxes; notice; failure to pay; authority to transact business revoked; lien; priority.

(1) Prior to January 1 of each even-numbered year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign corporation subject to sections 21-301 to 21-330 a notice stating that on or before March 1 of each even-numbered year occupation taxes are due to be paid and a properly executed and signed biennial report is due to be filed. If such occupation taxes are not paid and the report is not filed by April 15 of each even-numbered year, (a) such taxes and report shall become delinquent, (b) the authority of the delinquent corporation to transact business in this state shall be administratively revoked on April 16 of such year for nonpayment of occupation taxes and failure to file the report, and (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and deliver the biennial report within the time limited by sections 21-301 to 21-330, the Secretary of State shall on April 16 of such year administratively revoke the authority of the corporation to transact business in this state for nonpayment of taxes and shall bar the corporation from doing business in this state under the corporation laws of this state and make such entry and showing upon the records of his or her office.

(3)(a) The Secretary of State shall administratively revoke the authority of a foreign corporation by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-2,212.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

(4) All delinquent corporation occupation taxes of the foreign corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing in sections 21-322 to 21-330 shall be construed to allow a foreign corporation to do business in this state without complying with the laws of this state.

(5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes due to or assessable by this state have been paid and the biennial report filed by such corporation.

Source: Laws 1913, c. 240, § 23, p. 752; R.S.1913, § 783; Laws 1921, c. 173, § 2, p. 668; C.S.1922, § 701; C.S.1929, § 24-1723; R.S.1943, § 21-325; Laws 1957, c. 242, § 11, p. 824; Laws 1967, c. 101,

§ 13, p. 316; Laws 1969, c. 124, § 10, p. 574; Laws 1982, LB 928, § 12; Laws 1995, LB 109, § 200; Laws 2002, LB 989, § 6; Laws 2003, LB 524, § 13; Laws 2014, LB749, § 256.

21-325.01 Foreign corporation authority to transact business revoked; reinstatement; procedure.

(1)(a) Until January 1, 2017, the provisions of this subsection apply. A foreign corporation, the certificate of authority of which has been revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(c) A foreign corporation, the certificate of authority of which has been automatically revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-20,173;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the

original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked; and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

(2)(a) Beginning January 1, 2017, the provisions of this subsection apply. A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208; and

(iv) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for reinstatement.

(b) If the Secretary of State determines (i) that the application contains the information required by subdivision (a) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(c) A foreign corporation, the certificate of authority of which has been administratively revoked under section 21-325 for more than five years, may apply to the Secretary of State for late reinstatement. The application shall:

(i) Recite the name of the foreign corporation and the effective date of the revocation;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) State that the foreign corporation's name satisfies the requirements of section 21-2,208;

(iv) State that a legitimate reason exists for reinstatement and what such legitimate reason is;

(v) State that such reinstatement does not constitute fraud on the public; and

(vi) Be accompanied by a fee in the amount prescribed in section 21-205, as such section may from time to time be amended, for an application for late reinstatement.

(d) If the Secretary of State determines (i) that the application for late reinstatement contains the information required by subdivision (c) of this subsection and that the information is correct and (ii) that the foreign corporation has complied with subdivision (f) of this subsection, he or she shall cancel the certificate of revocation, prepare a certificate of late reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-2,212.

(e) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative revocation and the foreign corporation shall resume carrying on its business as if the administrative revocation had never occurred.

(f) A foreign corporation applying for reinstatement under this subsection shall:

(i)(A) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked, and (B) deliver to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(ii) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Source: Laws 1995, LB 109, § 201; Laws 1996, LB 1036, § 2; Laws 2003, LB 524, § 14; Laws 2012, LB854, § 3; Laws 2014, LB749, § 257; Laws 2015, LB279, § 7.

21-325.02 Foreign corporation authority to transact business; reinstatement denied; appeal.

(1) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation of its certificate of authority under section 21-325, he or she shall serve the foreign corporation under section 21-2,212 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-2,212. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Source: Laws 1996, LB 1036, § 3; Laws 2014, LB749, § 258.

21-328 Occupation tax; refund; procedure; appeal.

Any corporation paying the occupation tax imposed by section 21-303 or 21-306 may claim a refund if the payment of such occupation tax was invalid for any reason. The corporation shall file a written claim and any evidence supporting the claim within two years after payment of such occupation tax. The Secretary of State shall either approve or deny the claim within thirty days after such filing. Any approved claims shall be paid out of the General Fund. Appeal of a decision by the Secretary of State shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 799, § 1; Laws 1988, LB 352, § 21; Laws 2014, LB749, § 259.

Cross References

Administrative Procedure Act, see section 84-920.

21-329 Paid-up capital stock, defined.

For purposes of sections 21-301 to 21-330, the term paid-up capital stock shall mean, at any particular time, the sum of the par value of all shares of capital stock of the corporation issued and outstanding.

Source: Laws 1984, LB 800, § 1; Laws 1995, LB 109, § 202; Laws 1999, LB 35, § 1; Laws 2014, LB749, § 260.

21-330 Corporations; excess payment; refund.

Any corporation which has paid occupation tax in excess of the proper amount of the occupation tax imposed in sections 21-301 to 21-330 shall be entitled to a refund of such excess payment. Claims for refund shall be filed with the Secretary of State or may be submitted by the Secretary of State based on his or her own investigation. If approved or submitted by the Secretary of State, the claim shall be forwarded to the State Treasurer for payment from the General Fund. The Secretary of State shall not refund any excess occupation tax payment if five years have passed from the date of the excess payment.

Source: Laws 1991, LB 829, § 25; Laws 1992, Fourth Spec. Sess., LB 1, § 1; Laws 1993, LB 345, § 1; Laws 1995, LB 182, § 21; Laws 2003, LB 524, § 15; Laws 2006, LB 647, § 3; Laws 2014, LB749, § 261.

ARTICLE 4

NEBRASKA BENEFIT CORPORATION ACT

Section

21-401. Act, how cited.

21-402. Applicability of act; Nebraska Model Business Corporation Act generally applicable.

21-403. Terms, defined.

21-404. Incorporation; articles of incorporation; statement required.

Section

- 21-405. Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.
- 21-406. Benefit corporation; terminate status; procedure.
- 21-407. General public benefit; specific public benefit.
- 21-408. Board of directors, committees of the board, and directors; duties; powers; liability.
- 21-409. Board of directors; benefit director; annual benefit report; contents; liability.
- 21-410. Officer; consider interests and factors; liability; duties.
- 21-411. Benefit officer; powers and duties.
- 21-412. Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.
- 21-413. Annual benefit report; contents.
- 21-414. Annual benefit report; distribution; posting; Secretary of State; filing; fee.

21-401 Act, how cited.

Sections 21-401 to 21-414 shall be known and may be cited as the Nebraska Benefit Corporation Act.

Source: Laws 2014, LB751, § 1.

21-402 Applicability of act; Nebraska Model Business Corporation Act generally applicable.

(1) The Nebraska Benefit Corporation Act applies to all benefit corporations.

(2) The existence of a provision of the Nebraska Benefit Corporation Act does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. The act does not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.

(3) Except as otherwise provided in the Nebraska Benefit Corporation Act, the Nebraska Model Business Corporation Act is generally applicable to all benefit corporations. The specific provisions of the Nebraska Benefit Corporation Act control over the general provisions of the Nebraska Model Business Corporation Act. A benefit corporation may be subject simultaneously to the Nebraska Benefit Corporation Act and one or more other statutes that provide for the incorporation of a specific type of business corporation.

(4) A provision of the articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of the Nebraska Benefit Corporation Act.

Source: Laws 2014, LB751, § 2; Laws 2015, LB35, § 1.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-403 Terms, defined.

The following words and phrases when used in the Nebraska Benefit Corporation Act have the meanings given to them in this section unless the context clearly indicates otherwise:

- (1) Benefit corporation means a business corporation:
 - (a) Which has elected to become subject to the act; and
 - (b) The status of which as a benefit corporation has not been terminated;

(2) Benefit director means the director designated as the benefit director of a benefit corporation under section 21-409;

(3) Benefit enforcement proceeding means any claim or action or proceeding for:

(a) Failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(b) Violation of any obligation, duty, or standard of conduct under the act;

(4) Benefit officer means the officer designated as the benefit officer of a benefit corporation under section 21-411;

(5) Business corporation means a domestic corporation as defined in section 21-214;

(6) General public benefit means a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation;

(7) Independent means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. Serving as benefit director or benefit officer does not make an individual not independent. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(a) The individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary;

(b) An immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary; or

(c) There is beneficial or record ownership of five percent or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(i) The individual; or

(ii) An entity:

(A) Of which the individual is a director, an officer, or a manager; or

(B) In which the individual owns beneficially or of record five percent or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised;

(8) Minimum status vote means:

(a) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series are entitled to vote separately on a corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series; and

(ii) The corporate action must be approved by a vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; and

(b) In the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of equity interests in the entity that are entitled to receive a distribution of any kind from the entity are entitled to vote separately on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series; and

(ii) The action must be approved by a vote or consent of the holders described in subdivision (i) of this subdivision entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action;

(9) Publicly traded corporation means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association;

(10) Specific public benefit includes:

(a) Providing low-income or underserved individuals or communities with beneficial products or services;

(b) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) Protecting or restoring the environment;

(d) Improving human health;

(e) Promoting the arts, sciences, or advancement of knowledge;

(f) Increasing the flow of capital to entities with a purpose to benefit society or the environment; and

(g) Conferring any other particular benefit on society or the environment;

(11) Subsidiary means in relation to a person, an entity in which the person owns beneficially or of record fifty percent or more of the outstanding equity interests; and

(12) Third-party standard means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

(a) Comprehensive because it assesses the effect of the business and its operations upon the interests listed in subdivisions (1)(a)(ii), (iii), (iv), and (v) of section 21-408;

(b) Developed by an entity that is not controlled by the benefit corporation;

(c) Credible because it is developed by an entity that both:

(i) Has access to necessary expertise to assess overall corporate social and environmental performance; and

(ii) Uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; and

(d) Transparent because the following information is publicly available:

(i) About the standard:

(A) The criteria considered when measuring the overall social and environmental performance of a business; and

(B) The relative weightings, if any, of those criteria; and

(ii) About the development and revision of the standard:

(A) The identity of the directors, officers, material owners, and governing body of the entity that developed and controls revisions to the standard;

(B) The process by which revisions to the standard and changes to the membership of the governing body are made; and

(C) An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

Source: Laws 2014, LB751, § 3; Laws 2015, LB35, § 2.

21-404 Incorporation; articles of incorporation; statement required.

A benefit corporation shall be incorporated in accordance with the Nebraska Model Business Corporation Act, but its articles of incorporation must also state that it is a benefit corporation.

Source: Laws 2014, LB751, § 4; Laws 2015, LB35, § 3.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-405 Existing business corporation; amend articles of incorporation; statement required; other entities; procedure.

(1) An existing business corporation may become a benefit corporation under the Nebraska Benefit Corporation Act by amending its articles of incorporation so that they contain, in addition to the requirements of section 21-220, a statement that the corporation is a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) An entity that is not a benefit corporation may become a benefit corporation pursuant to subsection (1) of this section if the entity is (a) a party to a merger or conversion or (b) an exchanging entity in a share exchange, and the surviving, new, or resulting entity in the merger, conversion, or share exchange is to be a benefit corporation. In order to be effective, a plan of merger, conversion, or share exchange subject to this subsection must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 5; Laws 2015, LB35, § 4.

21-406 Benefit corporation; terminate status; procedure.

(1) A benefit corporation may terminate its status as such and cease to be subject to the Nebraska Benefit Corporation Act by amending its articles of incorporation to delete the provision required by section 21-404 or 21-405 to be stated in the articles of a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

(2) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote in order to be effective. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, is not effective unless the transaction is approved by at least the minimum status vote.

Source: Laws 2014, LB751, § 6.

21-407 General public benefit; specific public benefit.

(1) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 21-226.

(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 21-226 and subsection (1) of this section. The identification of a specific public benefit under this subsection does not limit the purpose of a benefit corporation to create general public benefit under subsection (1) of this section.

(3) The creation of general public benefit and specific public benefit under subsections (1) and (2) of this section is in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted by at least the minimum status vote.

Source: Laws 2014, LB751, § 7; Laws 2015, LB35, § 5.

21-408 Board of directors, committees of the board, and directors; duties; powers; liability.

(1) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(a) Shall consider the effects of any action or inaction upon:

(i) The shareholders of the benefit corporation;

(ii) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;

(iii) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;

(iv) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

(v) The local and global environment;

(vi) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(vii) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(b) May consider other pertinent factors or the interests of any other group that they deem appropriate; and

(c) Need not give priority to the interests of a particular person or group referred to in subdivision (a) or (b) of this subsection over the interests of any other person or group unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(2) The consideration of interests and factors in the manner required by subsection (1) of this section does not constitute a violation of section 21-2,102.

(3) Except as provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages for:

(a) Any action or inaction in the course of performing the duties of a director under subsection (1) of this section if the director performed the duties of office in compliance with section 21-2,102 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) A director who makes a business judgment in good faith fulfills the duty under this section if the director:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 8; Laws 2015, LB35, § 6.

21-409 Board of directors; benefit director; annual benefit report; contents; liability.

(1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of any other benefit corporation may, include a director, who:

(a) Shall be designated the benefit director; and

(b) Shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(2) The benefit director shall be elected and may be removed in the manner provided by the Nebraska Model Business Corporation Act. The benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by section 21-413, the opinion of the benefit director on all of the following:

(a) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the benefit report;

(b) Whether the directors and officers complied with subsection (1) of section 21-408 and subsection (1) of section 21-410, respectively; and

(c) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in subdivisions (3)(a) and (b) of this subsection, a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

(4) The action or inaction of an individual in the capacity of a benefit director constitutes for all purposes an action or inaction of that individual in the capacity of a director of the benefit corporation.

(5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by section 21-220, a benefit director is not personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

Source: Laws 2014, LB751, § 9; Laws 2015, LB35, § 7.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-410 Officer; consider interests and factors; liability; duties.

(1) Each officer of a benefit corporation shall consider the interests and factors described in subsection (1) of section 21-408 in the manner provided in that subsection if:

(a) The officer has discretion to act with respect to a matter; and

(b) It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(2) The consideration of interests and factors in the manner described in subsection (1) of this section does not constitute a violation of section 21-2,107.

(3) Except as provided in the articles of incorporation or bylaws, an officer is not personally liable for monetary damages for:

(a) An action or inaction as an officer in the course of performing the duties of an officer under subsection (1) of this section if the officer performed the duties of the position in compliance with section 21-2,107 and this section; or

(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(5) An officer who makes a business judgment in good faith fulfills the duty under this section if the officer:

(a) Is not interested in the subject of the business judgment;

(b) Is informed with respect to the subject of the business judgment to the extent the officer reasonably believes to be appropriate under the circumstances; and

(c) Rationally believes that the business judgment is in the best interests of the benefit corporation.

Source: Laws 2014, LB751, § 10; Laws 2015, LB35, § 8.

21-411 Benefit officer; powers and duties.

(1) A benefit corporation may have an officer designated the benefit officer.

(2) A benefit officer shall have:

(a) The powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:

(i) By the bylaws; or

(ii) Absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

(b) The duty to prepare the annual benefit report required by section 21-413.

Source: Laws 2014, LB751, § 11.

21-412 Limitation on actions and claims; liability; benefit enforcement proceeding; when authorized.

(1)(a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(i) Failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or

(ii) Violation of an obligation, duty, or standard of conduct under the Nebraska Benefit Corporation Act.

(b) A benefit corporation is not liable for monetary damages under the act for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(2) A benefit enforcement proceeding may be commenced or maintained only:

(a) Directly by the benefit corporation; or

(b) Derivatively in accordance with the Nebraska Model Business Corporation Act by:

(i) A person or group of persons that owned beneficially or of record at least two percent of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(ii) A director;

(iii) A person or group of persons that owned beneficially or of record five percent or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or

(iv) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

(3) For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

Source: Laws 2014, LB751, § 12; Laws 2015, LB35, § 9.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-413 Annual benefit report; contents.

(1) A benefit corporation shall prepare an annual benefit report including all of the following:

(a) A narrative description of:

(i) The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) Both:

(A) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and

(B) The extent to which that specific public benefit was created;

(iii) Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit; and

(iv) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report;

(b) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(i) Applied consistently with any application of that standard in prior benefit reports; or

(ii) Accompanied by an explanation of the reasons for:

(A) Any inconsistent application; or

(B) The change to that standard from the one used in the immediately prior benefit report;

(c) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(d) The compensation paid by the benefit corporation during the year to each director in the capacity of a director;

(e) The statement of the benefit director described in subsection (3) of section 21-409; and

(f) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or any holder of five percent or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or any holder of five percent or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(2) If, during the year covered by a benefit report, a benefit director resigned from or refused to stand for reelection to the position of benefit director, or was removed from the position of benefit director, and the benefit director furnished the benefit corporation with any written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report shall include that correspondence as an exhibit.

(3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by subdivision (1)(b) of this section needs to be audited or certified by a third-party standards provider.

Source: Laws 2014, LB751, § 13.

21-414 Annual benefit report; distribution; posting; Secretary of State; filing; fee.

(1) A benefit corporation shall send its annual benefit report to each shareholder:

(a) Within one hundred twenty days following the end of the fiscal year of the benefit corporation; or

(b) At the same time that the benefit corporation delivers any other annual report to its shareholders.

(2) A benefit corporation shall post all of its benefit reports on the public portion of its Internet web site, if any, except that the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(3) If a benefit corporation does not have an Internet web site, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(4)(a) Concurrently with the delivery of the benefit report to shareholders under subsection (1) of this section, the benefit corporation shall deliver a copy of the benefit report to the Secretary of State for filing, except that the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the Secretary of State.

(b) The Secretary of State shall charge a fee in the amount prescribed in subdivision (1)(z) of section 21-2005 prior to January 1, 2017, and in the amount prescribed in subdivision (a)(30) of section 21-205 on and after January 1, 2017, for filing a benefit report. The fee shall be remitted to the State Treasurer for credit to the Corporation Cash Fund.

Source: Laws 2014, LB751, § 14; Laws 2015, LB35, § 10; Laws 2015, LB279, § 8.

ARTICLE 5

NEBRASKA UNIFORM PROTECTED SERIES ACT

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.

(a) GENERAL PROVISIONS

Section

- 21-501. Short title.
- 21-502. Definitions.
- 21-503. Nature of protected series.
- 21-504. Powers and duration of protected series.
- 21-505. Governing law.
- 21-506. Relation of operating agreement, this act, and Nebraska Uniform Limited Liability Company Act.
- 21-507. Additional limitations on operating agreement.
- 21-508. Rules for applying Nebraska Uniform Limited Liability Company Act to specified provisions of act.

(b) ESTABLISHING PROTECTED SERIES

- 21-509. Protected series designation; amendment.
- 21-510. Name.
- 21-511. Registered agent.
- 21-512. Service of process, notice, demand, or other record.
- 21-513. Certificate of good standing for protected series.
- 21-514. Information required in biennial report; effect of failure to provide.

Section

(c) ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

- 21-515. Associated asset.
- 21-516. Associated member.
- 21-517. Protected-series transferable interest.
- 21-518. Management.
- 21-519. Right of person not associated member of protected series to information concerning protected series.

(d) LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

- 21-520. Limitations on liability.
- 21-521. Claim seeking to disregard limitation of liability.
- 21-522. Remedies of judgment creditor of associated member or protected-series transferee.
- 21-523. Enforcement against nonassociated asset.

(e) DISSOLUTION AND WINDING UP OF PROTECTED SERIES

- 21-524. Events causing dissolution of protected series.
- 21-525. Winding up dissolved protected series.
- 21-526. Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

(f) ENTITY TRANSACTIONS RESTRICTED

- 21-527. Definitions.
- 21-528. Protected series may not be party to entity transaction.
- 21-529. Restriction on entity transaction involving protected series.
- 21-530. Merger authorized; parties restricted.
- 21-531. Plan of merger.
- 21-532. Statement of merger.
- 21-533. Effect of merger.
- 21-534. Application of section 21-523 after merger.

(g) FOREIGN PROTECTED SERIES

- 21-535. Governing law.
- 21-536. No attribution of activities constituting doing business or for establishing jurisdiction.
- 21-537. Registration of foreign protected series.
- 21-538. Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

(h) MISCELLANEOUS PROVISIONS

- 21-539. Uniformity of application and construction.
- 21-540. Relation to Electronic Signatures in Global and National Commerce Act.
- 21-541. Transitional provisions.
- 21-542. Savings clause.

(a) GENERAL PROVISIONS

21-501 Short title.

Sections 21-501 to 21-542 shall be known and may be cited as the Nebraska Uniform Protected Series Act.

Source: Laws 2018, LB1121, § 2.

Operative date January 1, 2021.

21-502 Definitions.

In the Nebraska Uniform Protected Series Act:

- (1) Asset means property:

(A) in which a series limited liability company or protected series has rights; or

(B) as to which the company or protected series has the power to transfer rights.

(2) Associated asset means an asset that meets the requirements of section 21-515.

(3) Associated member means a member that meets the requirements of section 21-516.

(4) Foreign protected series means an arrangement, configuration, or other structure established by a foreign limited liability company which has attributes comparable to a protected series established under the act. The term applies whether or not the law under which the foreign company is organized refers to protected series.

(5) Foreign series limited liability company means a foreign limited liability company that has at least one foreign protected series.

(6) Nonassociated asset means:

(A) an asset of a series limited liability company which is not an associated asset of the company; or

(B) an asset of a protected series of the company which is not an associated asset of the protected series.

(7) Person includes a protected series.

(8) Protected series, except in the phrase foreign protected series, means a protected series established under section 21-509.

(9) Protected-series manager means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed under the operating agreement, the Nebraska Uniform Protected Series Act, and the Nebraska Uniform Limited Liability Company Act.

(10) Protected-series transferable interest means a right to receive a distribution from a protected series.

(11) Protected-series transferee means a person to which all or part of a protected-series transferable interest of a protected series of a series limited liability company has been transferred, other than the company. The term includes a person that owns a protected-series transferable interest as a result of ceasing to be an associated member of a protected series.

(12) Series limited liability company, except in the phrase foreign series limited liability company, means a limited liability company that has at least one protected series.

Source: Laws 2018, LB1121, § 3.

Operative date January 1, 2021.

21-503 Nature of protected series.

A protected series of a series limited liability company is a person distinct from:

(1) the company, subject to subsection (c) of section 21-504, subdivision (1) of section 21-524, and subsection (d) of section 21-525;

(2) another protected series of the company;

- (3) a member of the company, whether or not the member is an associated member of the protected series;
- (4) a protected-series transferee of a protected series of the company; and
- (5) a transferee of a transferable interest of the company.

Source: Laws 2018, LB1121, § 4.

Operative date January 1, 2021.

21-504 Powers and duration of protected series.

(a) A protected series of a series limited liability company has the capacity to sue and be sued in its own name.

(b) Except as otherwise provided in subsections (c) and (d) of this section, a protected series of a series limited liability company has the same powers and purposes as the company.

(c) A protected series of a series limited liability company ceases to exist not later than when the company completes its winding up.

(d) A protected series of a series limited liability company may not:

- (1) be a member of the company;
- (2) establish a protected series; or

(3) except as permitted by law of this state other than the Nebraska Uniform Protected Series Act, have a purpose or power that the law of this state other than the Nebraska Uniform Protected Series Act prohibits a limited liability company from doing or having.

Source: Laws 2018, LB1121, § 5.

Operative date January 1, 2021.

21-505 Governing law.

The law of this state governs:

(1) the internal affairs of a protected series of a series limited liability company, including:

(A) relations among any associated members of the protected series;

(B) relations among the protected series and:

- (i) any associated member;
- (ii) the protected-series manager; or
- (iii) any protected-series transferee;

(C) relations between any associated member and:

- (i) the protected-series manager; or
- (ii) any protected-series transferee;

(D) the rights and duties of a protected-series manager;

(E) governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) the relations between a protected series of a series limited liability company and each of the following:

- (A) the company;

(B) another protected series of the company;

(C) a member of the company which is not an associated member of the protected series;

(D) a protected-series manager that is not a protected-series manager of the protected series; and

(E) a protected-series transferee that is not a protected-series transferee of the protected series;

(3) the liability of a person for a debt, obligation, or other liability of a protected series of a series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:

(A) an associated member, protected-series transferee, or protected-series manager of the protected series;

(B) a member of the company which is not an associated member of the protected series;

(C) a protected-series manager that is not a protected-series manager of the protected series;

(D) a protected-series transferee that is not a protected-series transferee of the protected series;

(E) a manager of the company; or

(F) a transferee of a transferable interest of the company;

(4) the liability of a series limited liability company for a debt, obligation, or other liability of a protected series of the company if the debt, obligation, or liability is asserted solely by reason of the company:

(A) having delivered to the Secretary of State for filing under subsection (b) of section 21-509 a protected-series designation pertaining to the protected series or under subsection (d) of section 21-509 or subsection (c) of section 21-510 a statement of designation change pertaining to the protected series;

(B) being or acting as a protected-series manager of the protected series;

(C) having the protected series be or act as a manager of the company; or

(D) owning a protected-series transferable interest of the protected series; and

(5) the liability of a protected series of a series limited liability company for a debt, obligation, or other liability of the company or of another protected series of the company if the debt, obligation, or liability is asserted solely by reason of:

(A) the protected series:

(i) being a protected series of the company or having as a protected-series manager the company or another protected series of the company; or

(ii) being or acting as a protected-series manager of another protected series of the company or a manager of the company; or

(B) the company owning a protected-series transferable interest of the protected series.

Source: Laws 2018, LB1121, § 6.

Operative date January 1, 2021.

21-506 Relation of operating agreement, this act, and Nebraska Uniform Limited Liability Company Act.

(a) Except as otherwise provided in this section and subject to sections 21-507 and 21-508, the operating agreement of a series limited liability company governs:

(1) the internal affairs of a protected series, including:

(A) relations among any associated members of the protected series;

(B) relations among the protected series and:

(i) any associated member;

(ii) the protected-series manager; or

(iii) any protected-series transferee;

(C) relations between any associated member and:

(i) the protected-series manager; or

(ii) any protected-series transferee;

(D) the rights and duties of a protected-series manager;

(E) governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) relations among the protected series, the company, and any other protected series of the company;

(3) relations between:

(A) the protected series, its protected-series manager, any associated member of the protected series, or any protected-series transferee of the protected series; and

(B) a person in the person's capacity as:

(i) a member of the company which is not an associated member of the protected series;

(ii) a protected-series transferee or protected-series manager of another protected series; or

(iii) a transferee of the company.

(b) If the Nebraska Uniform Limited Liability Company Act restricts the power of an operating agreement to affect a matter, the restriction applies to a matter under the Nebraska Uniform Protected Series Act in accordance with section 21-508.

(c) If law of this state other than the Nebraska Uniform Protected Series Act imposes a prohibition, limitation, requirement, condition, obligation, liability, or other restriction on a limited liability company, a member, manager, or other agent of the company, or a transferee of the company, except as otherwise provided in law of this state other than the Nebraska Uniform Protected Series Act, the restriction applies in accordance with section 21-508.

(d) Except as otherwise provided in section 21-507, if the operating agreement of a series limited liability company does not provide for a matter described in subsection (a) of this section in a manner permitted by the Nebraska Uniform Protected Series Act, the matter is determined in accordance with the following rules:

(1) To the extent the Nebraska Uniform Protected Series Act addresses the matter, the Nebraska Uniform Protected Series Act governs.

(2) To the extent the Nebraska Uniform Protected Series Act does not address the matter, the Nebraska Uniform Limited Liability Company Act governs the matter in accordance with section 21-508.

Source: Laws 2018, LB1121, § 7.

Operative date January 1, 2021.

21-507 Additional limitations on operating agreement.

(a) An operating agreement may not vary the effect of:

- (1) this section;
- (2) section 21-503;
- (3) subsection (a) of section 21-504;
- (4) subsection (b) of section 21-504 to provide a protected series a power beyond the powers the Nebraska Uniform Limited Liability Company Act provides a limited liability company;
- (5) subsection (c) or (d) of section 21-504;
- (6) section 21-505;
- (7) section 21-506;
- (8) section 21-508;
- (9) section 21-509, except to vary the manner in which a limited liability company approves establishing a protected series;
- (10) section 21-510;
- (11) section 21-515;
- (12) section 21-516;
- (13) subsection (a) or (b) of section 21-517;
- (14) subsection (c) or (f) of section 21-518;
- (15) section 21-520, except to decrease or eliminate a limitation of liability stated in section 21-520;
- (16) section 21-521;
- (17) section 21-522;
- (18) section 21-523;
- (19) subdivisions (1), (4), and (5) of section 21-524;
- (20) section 21-525, except to designate a different person to manage winding up;
- (21) section 21-526;
- (22) sections 21-527 to 21-534;
- (23) sections 21-535 to 21-538;
- (24) sections 21-541 to 21-542, except to vary:
 - (A) the manner in which a series limited liability company may elect under subdivision (a)(2) of section 21-541 to be subject to the Nebraska Uniform Protected Series Act; or
 - (B) the person that has the right to sign and deliver to the Secretary of State for filing a record under subdivision (b)(2) of section 21-541; or
- (25) a provision of the Nebraska Uniform Protected Series Act pertaining to:
 - (A) registered agents; or

(B) the Secretary of State, including provisions pertaining to records authorized or required to be delivered to the Secretary of State for filing under the act.

(b) An operating agreement may not unreasonably restrict the duties and rights under section 21-521 but may impose reasonable restrictions on the availability and use of information obtained under section 21-519 and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

Source: Laws 2018, LB1121, § 8.
Operative date January 1, 2021.

21-508 Rules for applying Nebraska Uniform Limited Liability Company Act to specified provisions of act.

(a) Except as otherwise provided in subsection (b) of this section and section 21-507, the following rules apply in applying section 21-506, subsections (c) and (f) of section 21-518, subdivision (4)(A) of section 21-524, subsection (a) of section 21-525, and subdivision (2) of section 21-526:

(1) A protected series of a series limited liability company is deemed to be a limited liability company that is formed separately from the series limited liability company and is distinct from the series limited liability company and any other protected series of the series limited liability company.

(2) An associated member of the protected series is deemed to be a member of the company deemed to exist under subdivision (a)(1) of this section.

(3) A protected-series transferee of the protected series is deemed to be a transferee of the company deemed to exist under subdivision (a)(1) of this section.

(4) A protected-series transferable interest of the protected series is deemed to be a transferable interest of the company deemed to exist under subdivision (a)(1) of this section.

(5) A protected-series manager is deemed to be a manager of the company deemed to exist under subdivision (a)(1) of this section.

(6) An asset of the protected series is deemed to be an asset of the company deemed to exist under subdivision (a)(1) of this section, whether or not the asset is an associated asset of the protected series.

(7) Any creditor or other obligee of the protected series is deemed to be a creditor or obligee of the company deemed to exist under subdivision (a)(1) of this section.

(b) Subsection (a) of this section does not apply if its application would:

(1) contravene section 21-110; or

(2) authorize or require the Secretary of State to:

(A) accept for filing a type of record that neither the Nebraska Uniform Protected Series Act nor the Nebraska Uniform Limited Liability Company Act authorizes or requires a person to deliver to the Secretary of State for filing; or

(B) make or deliver a record that neither the Nebraska Uniform Protected Series Act nor the Nebraska Uniform Limited Liability Company Act authorizes or requires the Secretary of State to make or deliver.

Source: Laws 2018, LB1121, § 9.
Operative date January 1, 2021.

(b) ESTABLISHING PROTECTED SERIES

21-509 Protected series designation; amendment.

(a) With the affirmative vote or consent of all members of a limited liability company, the company may establish a protected series.

(b) To establish a protected series, a limited liability company shall deliver to the Secretary of State for filing a protected-series designation, signed by the company, stating the name of the company and the name of the protected series to be established.

(c) A protected series is established when the protected-series designation takes effect under section 21-121.

(d) To amend a protected-series designation, a series limited liability company shall deliver to the Secretary of State for filing a statement of designation change, signed by the company, that changes the name of the company, the name of the protected series to which the designation applies, or both. The change takes effect when the statement of designation change takes effect under section 21-121.

Source: Laws 2018, LB1121, § 10.
Operative date January 1, 2021.

21-510 Name.

(a) Except as otherwise provided in subsection (b) of this section, the name of a protected series must comply with section 21-108.

(b) The name of a protected series of a series limited liability company must:

(1) begin with the name of the company, including any word or abbreviation required by section 21-108; and

(2) contain the phrase Protected Series or protected series or the abbreviation P.S. or PS.

(c) If a series limited liability company changes its name, the company shall deliver to the Secretary of State for filing a statement of designation change for each of the company's protected series, changing the name of each protected series to comply with this section.

Source: Laws 2018, LB1121, § 11.
Operative date January 1, 2021.

21-511 Registered agent.

(a) The registered agent in this state for a series limited liability company is the registered agent in this state for each protected series of the company.

(b) Before delivering a protected-series designation to the Secretary of State for filing, a limited liability company shall agree with a registered agent that the agent will serve as the registered agent in this state for both the company and the protected series.

(c) A person that signs a protected-series designation delivered to the Secretary of State for filing affirms as a fact that the limited liability company on whose behalf the designation is delivered has complied with subsection (b) of this section.

(d) A person that ceases to be the registered agent for a series limited liability company ceases to be the registered agent for each protected series of the company.

(e) A person that ceases to be the registered agent for a protected series of a series limited liability company, other than as a result of the termination of the protected series, ceases to be the registered agent of the company and any other protected series of the company.

(f) Except as otherwise agreed by a series limited liability company and its registered agent, the agent is not obligated to distinguish between a process, notice, demand, or other record concerning the company and a process, notice, demand, or other record concerning a protected series of the company.

Source: Laws 2018, LB1121, § 12.

Operative date January 1, 2021.

21-512 Service of process, notice, demand, or other record.

(a) A protected series of a series limited liability company may be served with a process, notice, demand, or other record required or permitted by law by:

(1) serving the company;

(2) serving the registered agent of the protected series; or

(3) other means authorized by law of this state other than the Nebraska Uniform Limited Liability Company Act.

(b) Service of a summons and complaint on a series limited liability company is notice to each protected series of the company of service of the summons and complaint and the contents of the complaint.

(c) Service of a summons and complaint on a protected series of a series limited liability company is notice to the company and any other protected series of the company of service of the summons and complaint and the contents of the complaint.

(d) Service of a summons and complaint on a foreign series limited liability company is notice to each foreign protected series of the foreign company of service of the summons and complaint and the contents of the complaint.

(e) Service of a summons and complaint on a foreign protected series of a foreign series limited liability company is notice to the foreign company and any other foreign protected series of the company of service of the summons and complaint and the contents of the complaint.

(f) Notice to a person under subsection (b), (c), (d), or (e) of this section is effective whether or not the summons and complaint identify the person if the summons and complaint name as a party and identify:

(1) the series limited liability company or a protected series of the company; or

(2) the foreign series limited liability company or a foreign protected series of the foreign company.

Source: Laws 2018, LB1121, § 13.

Operative date January 1, 2021.

21-513 Certificate of good standing for protected series.

(a) On request of any person, the Secretary of State shall issue a certificate of good standing for a protected series of a series limited liability company or a certificate of registration for a foreign protected series if:

(1) in the case of a protected series:

(A) no statement of dissolution, termination, or relocation pertaining to the protected series has been filed; and

(B) the company has delivered to the Secretary of State for filing the most recent biennial report required by section 21-125 and the report includes the name of the protected series, unless:

(i) when the company delivered the report for filing, the protected series designation pertaining to the protected series had not yet taken effect; or

(ii) after the company delivered the report for filing, the company delivered to the Secretary of State for filing a statement of designation change changing the name of the protected series; or

(2) in the case of a foreign protected series, it is registered to do business in this state.

(b) A certificate issued under subsection (a) of this section must state:

(1) in the case of a protected series:

(A) the name of the protected series of the series limited liability company and the name of the company;

(B) that the requirements of subsection (a) of this section are met;

(C) the date the protected-series designation pertaining to the protected series took effect; and

(D) if a statement of designation change pertaining to the protected series has been filed, the effective date and contents of the statement;

(2) in the case of a foreign protected series, that it is registered to do business in this state;

(3) that the fees, taxes, interest, and penalties owed to this state by the protected series or foreign protected series and collected through the Secretary of State have been paid, if:

(A) payment is reflected in the records of the Secretary of State; and

(B) nonpayment affects the good standing of the protected series; and

(4) other facts reflected in the records of the Secretary of State pertaining to the protected series or foreign protected series which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated by the Secretary of State in a certificate issued under subsection (a) of this section, the certificate may be relied on as conclusive evidence of the facts stated in the certificate.

Source: Laws 2018, LB1121, § 14.

Operative date January 1, 2021.

21-514 Information required in biennial report; effect of failure to provide.

(a) In the biennial report required by section 21-125, a series limited liability company shall include the name of each protected series of the company:

(1) for which the company has previously delivered to the Secretary of State for filing a protected-series designation; and

(2) which has not dissolved and completed winding up.

(b) A failure by a series limited liability company to comply with subsection (a) of this section with regard to a protected series prevents issuance of a certificate of good standing pertaining to the protected series but does not otherwise affect the protected series.

Source: Laws 2018, LB1121, § 15.
Operative date January 1, 2021.

(c) ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

21-515 Associated asset.

(a) Only an asset of a protected series may be an associated asset of the protected series. Only an asset of a series limited liability company may be an associated asset of the company.

(b) An asset of a protected series of a series limited liability company is an associated asset of the protected series only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) identify the asset and distinguish it from any other asset of the protected series, any asset of the company, and any asset of any other protected series of the company;

(2) determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and

(3) if the protected series acquired the asset from the company or another protected series of the company, determine any consideration paid, the payor, and the payee.

(c) An asset of a series limited liability company is an associated asset of the company only if the company creates and maintains records that state the name of the company and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) identify the asset and distinguish it from any other asset of the company and any asset of any protected series of the company;

(2) determine when and from what person the company acquired the asset or how the asset otherwise became an asset of the company; and

(3) if the company acquired the asset from a protected series of the company, determine any consideration paid, the payor, and the payee.

(d) The records and recordkeeping required by subsections (b) and (c) of this section may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

(e) To the extent permitted by this section and law of this state other than the Nebraska Uniform Protected Series Act, a series limited liability company or protected series of the company may hold an associated asset directly or indirectly, through a representative, nominee, or similar arrangement, except that:

(1) a protected series may not hold an associated asset in the name of the company or another protected series of the company; and

(2) the company may not hold an associated asset in the name of a protected series of the company.

Source: Laws 2018, LB1121, § 16.

Operative date January 1, 2021.

21-516 Associated member.

(a) Only a member of a series limited liability company may be an associated member of a protected series of the company.

(b) A member of a series limited liability company becomes an associated member of a protected series of the company if the operating agreement or a procedure established by the agreement states:

(1) that the member is an associated member of the protected series;

(2) the date on which the member became an associated member; and

(3) any protected-series transferable interest the associated member has in connection with becoming or being an associated member.

(c) If a person that is an associated member of a protected series of a series limited liability company is dissociated from the company, the person ceases to be an associated member of the protected series.

Source: Laws 2018, LB1121, § 17.

Operative date January 1, 2021.

21-517 Protected-series transferable interest.

(a) A protected-series transferable interest of a protected series of a series limited liability company must be owned initially by an associated member of the protected series or the company.

(b) If a protected series of a series limited liability company has no associated members when established, the company owns the protected-series transferable interests in the protected series.

(c) In addition to acquiring a protected series transferable series interest under subsection (b), a series limited liability company may acquire a series transferable interest through a transfer from another person or as provided in the operating agreement.

(d) Except for subdivision (a)(3) of section 21-508, a provision of the Nebraska Uniform Protected Series Act which applies to a protected-series transferee of a protected series of a series limited liability company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series. A provision of the operating agreement of a series limited liability company which applies to a protected-series transferee of a protected series of the company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series.

Source: Laws 2018, LB1121, § 18.

Operative date January 1, 2021.

21-518 Management.

(a) A protected series may have more than one protected-series manager.

(b) If a protected series has no associated members, the series limited liability company is the protected-series manager.

(c) Section 21-508 applies to determine any duties of a protected-series manager of a protected series of a series limited liability company to:

- (1) the protected series;
- (2) any associated member of the protected series; and
- (3) any protected-series transferee of the protected series.

(d) Solely by reason of being or acting as a protected-series manager of a protected series of a series limited liability company, a person owes no duty to:

- (1) the company;
- (2) another protected series of the company; or
- (3) another person in that person's capacity as:

(A) a member of the company which is not an associated member of the protected series;

(B) a protected-series transferee or protected-series manager of another protected series; or

(C) a transferee of the company.

(e) An associated member of a protected series of a series limited liability company has the same rights as any other member of the company to vote on or consent to an amendment to the company's operating agreement or any other matter being decided by the members, whether or not the amendment or matter affects the interests of the protected series or the associated member.

(f) Sections 21-164 to 21-169 apply to a protected series in accordance with section 21-508.

Source: Laws 2018, LB1121, § 19.

Operative date January 1, 2021.

21-519 Right of person not associated member of protected series to information concerning protected series.

(a) A member of a series limited liability company which is not an associated member of a protected series of the company has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a member that is not a manager of a manager-managed limited liability company has a right to information concerning the company under section 21-139.

(b) A person formerly an associated member of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a person dissociated as a member of a manager-managed limited liability company has a right to information concerning the company under section 21-139.

(c) If an associated member of a protected series dies, the legal representative of the deceased associated member has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that the legal representative of a deceased member of a limited liability company has a right to information concerning the company under section 21-139.

(d) A protected-series manager of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a manager of a manager-managed limited liability company has a right to information concerning the company under section 21-139.

Source: Laws 2018, LB1121, § 20.
Operative date January 1, 2021.

(d) LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

21-520 Limitations on liability.

(a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

(1) a protected series of a series limited liability company solely by reason of being or acting as:

(A) an associated member, series manager, or protected-series transferee of the protected series; or

(B) a member, manager, or a transferee of the company; or

(2) a series limited liability company solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the company.

(b) Subject to section 21-523, the following rules apply:

(1) A debt, obligation, or other liability of a series limited liability company is solely the debt, obligation, or liability of the company.

(2) A debt, obligation, or other liability of a protected series is solely the debt, obligation, or liability of the protected series.

(3) A series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a protected series of the company solely by reason of the protected series being a protected series of the company or the company:

(A) being or acting as a protected-series manager of the protected series;

(B) having the protected series manage the company; or

(C) owning a protected-series transferable interest of the protected series.

(4) A protected series of a series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company or another protected series of the company solely by reason of:

(A) being a protected series of the company;

(B) being or acting as a manager of the company or a protected-series manager of another protected series of the company; or

(C) having the company or another protected series of the company be or act as a protected-series manager of the protected series.

Source: Laws 2018, LB1121, § 21.
Operative date January 1, 2021.

21-521 Claim seeking to disregard limitation of liability.

(a) Except as otherwise provided in subsection (b) of this section, a claim seeking to disregard a limitation in section 21-520 is governed by the principles of law and equity, including a principle providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, which would apply if each protected series of a series limited liability company were a limited liability company formed separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company.

(b) The failure of a limited liability company or a protected series to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground to disregard a limitation in subsection (a) of section 21-520 but may be a ground to disregard a limitation in subsection (b) of section 21-520.

(c) This section applies to a claim seeking to disregard a limitation of liability applicable to a foreign series limited liability company or foreign protected series and comparable to a limitation stated in section 21-520, if:

(1) the claimant is a resident of this state or doing business or registered to do business in this state; or

(2) the claim is to establish or enforce a liability arising under law of this state other than the Nebraska Uniform Protected Series Act or from an act or omission in this state.

Source: Laws 2018, LB1121, § 22.

Operative date January 1, 2021.

21-522 Remedies of judgment creditor of associated member or protected-series transferee.

Sections 21-140 to 21-143 apply to a judgment creditor of:

(1) an associated member or protected-series transferee of a protected series; or

(2) a series limited liability company, to the extent the company owns a protected-series transferable interest of a protected series.

Source: Laws 2018, LB1121, § 23.

Operative date January 1, 2021.

21-523 Enforcement against nonassociated asset.

(a) In this section:

(1) Enforcement date means 12:01 a.m. on the date on which a claimant first serves process on a series limited liability company or protected series in an action seeking to enforce under this section a claim against an asset of the company or protected series by attachment, levy, or the like.

(2) Subject to subsection (b) of section 21-534, incurrence date means the date on which a series limited liability company or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under this section.

(b) If a claim against a series limited liability company or a protected series of the company has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following rules:

(1) A judgment against the company may be enforced against an asset of a protected series of the company if the asset:

(A) was a nonassociated asset of the protected series on the incurrence date; or

(B) is a nonassociated asset of the protected series on the enforcement date.

(2) A judgment against a protected series may be enforced against an asset of the company if the asset:

(A) was a nonassociated asset of the company on the incurrence date; or

(B) is a nonassociated asset of the company on the enforcement date.

(3) A judgment against a protected series may be enforced against an asset of another protected series of the company if the asset:

(A) was a nonassociated asset of the other protected series on the incurrence date; or

(B) is a nonassociated asset of the other protected series on the enforcement date.

(c) In addition to any other remedy provided by law or equity, if a claim against a series limited liability company or a protected series has not been reduced to a judgment and law other than the Nebraska Uniform Protected Series Act permits a prejudgment remedy by attachment, levy, or the like, the court may apply subsection (b) of this section as a prejudgment remedy.

(d) In a proceeding under this section, the party asserting that an asset is or was an associated asset of a series limited liability company or a protected series of the company has the burden of proof on the issue.

(e) This section applies to an asset of a foreign series limited liability company or foreign protected series if:

(1) the asset is real or tangible property located in this state;

(2) the claimant is a resident of this state or doing business or registered to do business in this state, or the claim under this section is to enforce a judgment, or to seek a prejudgment remedy, pertaining to a liability arising from law of this state other than the Nebraska Uniform Protected Series Act or an act or omission in this state; and

(3) the asset is not identified in the records of the foreign series limited liability company or foreign protected series in a manner comparable to the manner required by section 21-515.

Source: Laws 2018, LB1121, § 24.

Operative date January 1, 2021.

(e) DISSOLUTION AND WINDING UP OF PROTECTED SERIES

21-524 Events causing dissolution of protected series.

A protected series of a series limited liability company is dissolved, and its activities and affairs must be wound up, only on the:

(1) dissolution of the company;

(2) occurrence of an event or circumstance the operating agreement states causes dissolution of the protected series;

(3) affirmative vote or consent of all members; or

(4) entry by the court of an order dissolving the protected series on application by an associated member or protected-series manager of the protected series:

(A) in accordance with section 21-508; and

(B) to the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member or manager of the company; or

(5) entry by the court of an order dissolving the protected series on application by the company or a member of the company on the ground that the conduct of all or substantially all the activities and affairs of the protected series is illegal.

Source: Laws 2018, LB1121, § 25.

Operative date January 1, 2021.

21-525 Winding up dissolved protected series.

(a) Subject to subsections (b) and (c) of this section and in accordance with section 21-508:

(1) a dissolved protected series shall wind up its activities and affairs in the same manner that a limited liability company winds up its activities and affairs under sections 21-147 to 21-154, subject to the same requirements and conditions and with the same effects; and

(2) judicial supervision or another judicial remedy is available in the winding up of the protected series to the same extent, in the same manner, under the same conditions, and with the same effects that apply under subsection (e) of section 21-148.

(b) When a protected series of a series limited liability company dissolves, the company may deliver to the Secretary of State for filing a statement of protected-series dissolution stating the name of the company and the protected series and that the protected series is dissolved. The filing of the statement by the Secretary of State has the same effect as the filing by the Secretary of State of a statement of dissolution under subdivision (d)(2)(A) of section 21-103.

(c) When a protected series of a series limited liability company has completed winding up, the company may deliver to the Secretary of State for filing a statement of designation cancellation stating the name of the company and the protected series and that the protected series is terminated. The filing of the statement by the Secretary of State has the same effect as the filing by the Secretary of State of a statement of termination under subdivision (d)(2)(B) of section 21-103.

(d) A series limited liability company has not completed its winding up until each of the protected series of the company has completed its winding up.

Source: Laws 2018, LB1121, § 26.

Operative date January 1, 2021.

21-526 Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

If a series limited liability company that has been administratively dissolved is reinstated, or a series limited liability company that voluntarily dissolved rescinds its dissolution:

- (1) each protected series of the company ceases winding up; and
- (2) sections 21-152 and 21-153 apply to each protected series of the company in accordance with section 21-508.

Source: Laws 2018, LB1121, § 27.
Operative date January 1, 2021.

(f) ENTITY TRANSACTIONS RESTRICTED

21-527 Definitions.

In sections 21-527 to 21-534:

(1) After a merger or after the merger means when a merger under section 21-530 becomes effective and afterwards.

(2) Before a merger or before the merger means before a merger under section 21-530 becomes effective.

(3) Continuing protected series means a protected series of a surviving company which continues in uninterrupted existence after a merger under section 21-530.

(4) Merging company means a limited liability company that is party to a merger under section 21-530.

(5) Nonsurviving company means a merging company that does not continue in existence after a merger under section 21-530.

(6) Relocated protected series means a protected series of a nonsurviving company which, after a merger under section 21-530, continues in uninterrupted existence as a protected series of the surviving company.

(7) Surviving company means a merging company that continues in existence after a merger under section 21-530.

Source: Laws 2018, LB1121, § 28.
Operative date January 1, 2021.

21-528 Protected series may not be party to entity transaction.

A protected series may not:

(1) be an acquiring, acquired, converting, converted, merging, or surviving entity;

(2) participate in a domestication; or

(3) be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, conversion, or domestication.

Source: Laws 2018, LB1121, § 29.
Operative date January 1, 2021.

21-529 Restriction on entity transaction involving protected series.

A series limited liability company may not be:

(1) an acquiring, acquired, converting, converted, domesticating, or domesticated entity; or

(2) except as otherwise provided in section 21-530, a party to or the surviving company of a merger.

Source: Laws 2018, LB1121, § 30.
Operative date January 1, 2021.

21-530 Merger authorized; parties restricted.

A series limited liability company may be party to a merger in accordance with sections 21-171 to 21-174, this section, and sections 21-531 to 21-534 only if:

- (1) each other party to the merger is a limited liability company; and
- (2) the surviving company is not created in the merger.

Source: Laws 2018, LB1121, § 31.
Operative date January 1, 2021.

21-531 Plan of merger.

In a merger under section 21-530, the plan of merger must:

- (1) comply with sections 21-171 to 21-174; and
- (2) state in a record:

(A) for any protected series of a nonsurviving company, whether after the merger the protected series will be a relocated protected series or be dissolved, wound up, and terminated;

(B) for any protected series of the surviving company which exists before the merger, whether after the merger the protected series will be a continuing protected series or be dissolved, wound up, and terminated;

(C) for each relocated protected series or continuing protected series:

(i) the name of any person that becomes an associated member or protected-series transferee of the protected series after the merger, any consideration to be paid by, on behalf of, or in respect of the person, the name of the payor, and the name of the payee;

(ii) the name of any person whose rights or obligations in the person's capacity as an associated member or protected-series transferee will change after the merger;

(iii) any consideration to be paid to a person who before the merger was an associated member or protected-series transferee of the protected series and the name of the payor; and

(iv) if after the merger the protected series will be a relocated protected series, its new name;

(D) for any protected series to be established by the surviving company as a result of the merger:

(i) the name of the protected series;

(ii) any protected-series transferable interest to be owned by the surviving company when the protected series is established; and

(iii) the name of and any protected-series transferable interest owned by any person that will be an associated member of the protected series when the protected series is established; and

(E) for any person that is an associated member of a relocated protected series and will remain a member after the merger, any amendment to the operating agreement of the surviving company which:

- (1) is or is proposed to be in a record; and
- (2) is necessary or appropriate to state the rights and obligations of the person as a member of the surviving company.

Source: Laws 2018, LB1121, § 32.

Operative date January 1, 2021.

21-532 Statement of merger.

In a merger under section 21-530, the statement of merger must:

- (1) comply with sections 21-171 to 21-174; and
- (2) include as an attachment the following records, each to become effective when the merger becomes effective:

(A) for a protected series of a merging company being terminated as a result of the merger, a statement of termination signed by the company;

(B) for a protected series of a nonsurviving company which after the merger will be a relocated protected series:

(i) a statement of relocation signed by the nonsurviving company which contains the name of the company and the name of the protected series before and after the merger; and

(ii) a statement of protected-series designation signed by the surviving company; and

(C) for a protected series being established by the surviving company as a result of the merger, a statement of designation signed by the company.

Source: Laws 2018, LB1121, § 33.

Operative date January 1, 2021.

21-533 Effect of merger.

When a merger under section 21-530 becomes effective, in addition to the effects stated in sections 21-171 to 21-174:

(1) as provided in the plan of merger, each protected series of each merging company which was established before the merger:

(A) is a relocated protected series or continuing protected series; or

(B) is dissolved, wound up, and terminated;

(2) any protected series to be established as a result of the merger is established;

(3) any relocated protected series or continuing protected series is the same person without interruption as it was before the merger;

(4) all property of a relocated protected series or continuing protected series continues to be vested in the protected series without transfer, reversion, or impairment;

(5) all debts, obligations, and other liabilities of a relocated protected series or continuing protected series continue as debts, obligations, and other liabilities of the protected series;

(6) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of a relocated protected series or continuing protected series remain in the protected series;

(7) the new name of a relocated protected series may be substituted for the former name of the protected series in any pending action or proceeding;

(8) if provided in the plan of merger:

(A) a person becomes an associated member or protected-series transferee of a relocated protected series or continuing protected series;

(B) a person becomes an associated member of a protected series established by the surviving company as a result of the merger;

(C) any change in the rights or obligations of a person in the person's capacity as an associated member or protected-series transferee of a relocated protected series or continuing protected series take effect; and

(D) any consideration to be paid to a person that before the merger was an associated member or protected-series transferee of a relocated protected series or continuing protected series is due; and

(9) any person that is a member of a relocated protected series becomes a member of the surviving company, if not already a member.

Source: Laws 2018, LB1121, § 34.

Operative date January 1, 2021.

21-534 Application of section 21-523 after merger.

(a) A creditor's right that existed under section 21-523 immediately before a merger under section 21-530 may be enforced after the merger in accordance with the following rules:

(1) A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

(2) A creditor's right that existed immediately before the merger against a nonsurviving company:

(A) may be asserted against an asset of the nonsurviving company which vested in the surviving company as a result of the merger; and

(B) does not otherwise change.

(3) Subject to subsection (b) of this section, the following rules apply:

(A) In addition to the remedy stated in subdivision (a)(1) of this section, a creditor with a right under section 21-523 which existed immediately before the merger against a nonsurviving company or a relocated protected series may assert the right against:

(i) an asset of the surviving company, other than an asset of the nonsurviving company which vested in the surviving company as a result of the merger;

(ii) an asset of a continuing protected series; or

(iii) an asset of a protected series established by the surviving company as a result of the merger;

(iv) if the creditor's right was against an asset of the nonsurviving company, an asset of a relocated series; or

(v) if the creditor's right was against an asset of a relocated protected series, an asset of another relocated protected series.

(B) In addition to the remedy stated in subdivision (a)(2) of this section, a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

(i) an asset of a relocated protected series; or

(ii) an asset of a nonsurviving company which vested in the surviving company as a result of the merger.

(b) For the purposes of subdivision (a)(3) of this section and subdivisions (b)(1)(A), (b)(2)(A), and (b)(3)(A) of section 21-523, the incurrence date is deemed to be the date on which the merger becomes effective.

(c) A merger under section 21-530 does not affect the manner in which section 21-523 applies to a liability incurred after the merger.

Source: Laws 2018, LB1121, § 35.

Operative date January 1, 2021.

(g) FOREIGN PROTECTED SERIES

21-535 Governing law.

The law of the jurisdiction of formation of a foreign series limited liability company governs:

(1) the internal affairs of a foreign protected series of the company, including:

(A) relations among any associated members of the foreign protected series;

(B) relations between the foreign protected series and:

(i) any associated member;

(ii) the protected-series manager; or

(iii) any protected-series transferee;

(C) relations between any associated member and:

(i) the protected-series manager; or

(ii) any protected-series transferee;

(D) the rights and duties of a protected-series manager;

(E) governance decisions affecting the activities and affairs of the foreign protected series and the conduct of those activities and affairs; and

(F) procedures and conditions for becoming an associated member or protected-series transferee;

(2) relations between the foreign protected series and:

(A) the company;

(B) another foreign protected series of the company;

(C) a member of the company which is not an associated member of the foreign protected series;

(D) a foreign protected-series manager that is not a protected-series manager of the protected series;

(E) a foreign protected-series transferee that is not a foreign protected-series transferee of the protected series; and

(F) a transferee of a transferable interest of the company;

(3) except as otherwise provided in sections 21-521 and 21-523, the liability of a person for a debt, obligation, or other liability of a foreign protected series of a foreign series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:

(A) an associated member, protected-series transferee, or protected-series manager of the foreign protected series;

(B) a member of the company which is not an associated member of the foreign protected series;

(C) a protected-series manager of another foreign protected series of the company;

(D) a protected-series transferee of another foreign protected series of the company;

(E) a manager of the company; or

(F) a transferee of a transferable interest of the company; and

(4) except as otherwise provided in sections 21-521 and 21-523:

(A) the liability of the foreign series limited liability company for a debt, obligation, or other liability of a foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series being a foreign protected series of the company or the company:

(i) being or acting as a foreign protected-series manager of the foreign protected series;

(ii) having the foreign protected series manage the company; or

(iii) owning a protected-series transferable interest of the foreign protected series; and

(B) the liability of a foreign protected series for a debt, obligation, or other liability of the company or another foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series:

(i) being a foreign protected series of the company or having the company or another foreign protected series of the company be or act as foreign protected-series manager of the foreign protected series; or

(ii) managing the company or being or acting as a foreign protected-series manager of another foreign protected series of the company.

Source: Laws 2018, LB1121, § 36.

Operative date January 1, 2021.

21-536 No attribution of activities constituting doing business or for establishing jurisdiction.

In determining whether a foreign series limited liability company or foreign protected series of the company does business in this state or is subject to the personal jurisdiction of the courts of this state:

(1) the activities and affairs of the company are not attributable to a foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company; and

(2) the activities and affairs of a foreign protected series are not attributable to the company or another foreign protected series of the company solely by

reason of the foreign protected series being a foreign protected series of the company.

Source: Laws 2018, LB1121, § 37.
Operative date January 1, 2021.

21-537 Registration of foreign protected series.

(a) Except as otherwise provided in this section and subject to sections 21-521 and 21-523, the law of this state governing the registration of a foreign limited liability company to do business in this state, including the consequences of not complying with that law, applies to a foreign protected series of a foreign series limited liability company as if the foreign protected series were a foreign limited liability company formed separately from the foreign series limited liability company and distinct from the foreign series limited liability company and any other foreign protected series of the foreign series limited liability company.

(b) An application by a foreign protected series of a foreign series limited liability company for registration to do business in this state must include:

(1) the name and jurisdiction of formation of the foreign series limited liability company; and

(2) if the company has other foreign protected series, the name and street and mailing address of an individual who knows the name and street and mailing address of:

(A) each other foreign protected series of the foreign series limited liability company; and

(B) the foreign protected-series manager of and agent for service of process for each other foreign protected series of the foreign series limited liability company.

(c) The name of a foreign protected series applying for registration or registered to do business in this state must comply with section 21-510 and may do so using subdivision (b)(2) of section 21-108, if the fictitious name complies with section 21-510.

(d) The requirement in subdivision (a)(5) and subsection (c) of section 21-114, subsection (e) of section 21-118, section 21-122, subsection (d) of section 21-125, and section 21-173 to amend a statement of registration to update information applies to the information required by subsection (b) of this section.

Source: Laws 2018, LB1121, § 38.
Operative date January 1, 2021.

21-538 Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

(a) Not later than thirty days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in this state or a tribunal of the United States located in this state:

(1) a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) each foreign protected series of the company; and

(B) each foreign protected-series manager of and a registered agent for service of process for each foreign protected series of the company; and

(2) a foreign protected series of a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) the company and each manager of the company and an agent for service of process for the company; and

(B) any other foreign protected series of the company and each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

(b) If a foreign series limited liability company or foreign protected series challenges the personal jurisdiction of the tribunal, the requirement that the foreign company or foreign protected series make disclosure under subsection (a) of this section is tolled until the tribunal determines whether it has personal jurisdiction.

(c) If a foreign series limited liability company or foreign protected series does not comply with subsection (a) of this section, a party to the proceeding may:

(1) request the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules; or

(2) bring a separate proceeding in the court to enforce subsection (a) of this section.

Source: Laws 2018, LB1121, § 39.

Operative date January 1, 2021.

(h) MISCELLANEOUS PROVISIONS

21-539 Uniformity of application and construction.

In applying and construing the Nebraska Uniform Protected Series 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 2018, LB1121, § 40.

Operative date January 1, 2021.

21-540 Relation to Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Protected Series Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2018, LB1121, § 41.

Operative date January 1, 2021.

21-541 Transitional provisions.

(a) Before January 1, 2022, the Nebraska Uniform Protected Series Act governs only:

(1) a series limited liability company formed, or a protected series established, on or after January 1, 2021; and

(2) a limited liability company that is a series limited liability company before January 1, 2021, and elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to the act.

(b) If a series limited liability company elects under subsection (a)(2) of this section to be subject to the act:

(1) the election applies to each protected series of the company, whenever established; and

(2) a manager of the company has the right to sign and deliver to the Secretary of State for filing any record necessary to comply with the act, whether the record pertains to the company, a protected series of the company, or both.

(c) On and after January 1, 2022, the act governs all series limited liability companies and protected series.

(d) Until January 1, 2022, sections 21-521 and 21-523 do not apply to a foreign protected series that was established before January 1, 2021, or a foreign limited liability company that became a foreign series limited liability company before January 1, 2021.

Source: Laws 2018, LB1121, § 42.

Operative date January 1, 2021.

21-542 Savings clause.

The Nebraska Uniform Protected Series Act does not affect an action commenced, proceeding brought, or right accrued before January 1, 2021.

Source: Laws 2018, LB1121, § 43.

Operative date January 1, 2021.

ARTICLE 6

CHARITABLE AND FRATERNAL SOCIETIES

Section

21-610. Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

21-610 Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

When any such organization has established in this state an institution for the care of children or persons who are incapacitated in any manner and such institution has been incorporated under the laws of Nebraska, such corporation shall have power to act either by itself or jointly with any natural person or persons (1) as administrator of the estate of any deceased person whose domicile was within the county in which the corporation is located or whose domicile was outside the State of Nebraska, (2) as executor under a last will and testament or as guardian of the property of any infant, person with an intellectual disability, person with a mental disorder, or person under other disability, or (3) as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person.

Source: Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 353; Laws 1921, c. 147, § 1, p. 624; Laws 1921, c. 174, § 1, p. 672; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 146; Laws 1925, c. 148,

§ 1, p. 386; Laws 1929, c. 57, § 1, p. 225; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 171; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-610; Laws 1986, LB 1177, § 3; Laws 2013, LB23, § 1.

ARTICLE 13

COOPERATIVE COMPANIES

(a) GENERAL PROVISIONS

Section

21-1301. Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

(a) GENERAL PROVISIONS

21-1301 Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

Any number of persons, not less than ten, or one or more cooperative companies, may form and organize a cooperative corporation for the transaction of any lawful business by the adoption of articles of incorporation in the same manner and with like powers and duties as is required of other corporations except as provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301 and 21-1303 shall be deemed to apply to electrical cooperatives or electric member associations. If the Nebraska Model Business Corporation Act requires an affirmative vote of a specified percentage of stockholders before action can be taken by a corporation, such percentage for a cooperative corporation shall be of the votes cast on the matter at the stockholders' meeting at which the same shall be voted upon.

Source: Laws 1911, c. 32, § 2, p. 196; R.S.1913, § 734; Laws 1919, c. 197, § 3, p. 879; Laws 1921, c. 28, § 1, p. 161; C.S.1922, § 642; Laws 1925, c. 79, § 1, p. 243; C.S.1929, § 24-1301; R.S.1943, § 21-1301; Laws 1963, c. 102, § 1, p. 422; Laws 1975, LB 156, § 1; Laws 1995, LB 109, § 203; Laws 2014, LB749, § 262.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Transactions exempt from Securities Act of Nebraska, see section 8-1111.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section

21-1701. Act, how cited.
 21-1708.01. Financial institution, defined.
 21-1709. Fixed asset, defined.
 21-1724. Organization; procedure; hearing.
 21-1725. Repealed. Laws 2017, LB375, § 10.
 21-1725.01. New credit union; branch credit union; application; procedure; hearing.
 21-1736. Examinations.
 21-1740. Credit union; powers.
 21-1741. Safe deposit box service.
 21-1770. Loan officer license; opt out.
 21-1782. Joint accounts.

Section

- 21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.
- 21-17,116. Repealed. Laws 2017, LB375, § 10.

(a) CREDIT UNION ACT

21-1701 Act, how cited.

Sections 21-1701 to 21-17,115 shall be known and may be cited as the Credit Union Act.

Source: Laws 1996, LB 948, § 1; Laws 2000, LB 932, § 23; Laws 2002, LB 957, § 15; Laws 2017, LB375, § 1.

21-1708.01 Financial institution, defined.

Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company.

Source: Laws 2017, LB375, § 2.

21-1709 Fixed asset, defined.

Fixed asset shall mean assets as prescribed in generally accepted accounting principles.

Source: Laws 1996, LB 948, § 9; Laws 2017, LB375, § 3.

21-1724 Organization; procedure; hearing.

(1) Any nine or more individuals residing in the State of Nebraska who are nineteen years of age or older and who have a common bond pursuant to section 21-1743 may apply to the department on forms prescribed by the department for permission to organize a credit union and to become charter members and subscribers of the credit union.

(2) The subscribers shall execute in duplicate articles of association and shall agree to the terms of the articles of association. The terms shall state:

(a) The name, which shall include the words "credit union" and shall not be the same as the name of any other credit union in this state, whether or not organized under the Credit Union Act, and the location where the proposed credit union will have its principal place of business;

(b) The names and addresses of the subscribers to the articles of association and the number of shares subscribed by each;

(c) The par value of the shares of the credit union which shall be established by its board of directors. A credit union may have more than one class of shares;

(d) The common bond of members of the credit union; and

(e) That the existence of the credit union shall be perpetual.

(3) The subscribers shall prepare and adopt bylaws for the governance of the credit union. The bylaws shall be consistent with the Credit Union Act and shall be executed in duplicate.

(4) The subscribers shall select at least five qualified individuals to serve on the board of directors of the credit union, at least three qualified individuals to

serve on the supervisory committee of the credit union, and at least three qualified individuals to serve on the credit committee of the credit union, if any. Such individuals shall execute a signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later.

(5) The articles of association and the bylaws, both executed in duplicate, shall be forwarded by the subscribers along with the required fee, if any, to the director, as an application for a certificate of approval.

(6) The director shall within one hundred twenty calendar days after receipt of the articles of association and the bylaws: (a) Act upon the application to determine whether the articles of association conform with this section and whether or not the character of the applicants and the conditions existing are favorable for the success of the credit union; and (b) notify the applicants of his or her decision.

(7) If the decision is favorable, the director shall issue a certificate of approval to the credit union. The certificate of approval shall be attached to the duplicate articles of association and returned, with the duplicate bylaws, to such subscribers.

(8) The subscribers shall file the certificate of approval with the articles of association attached in the office of the county clerk of the county in which the credit union is to locate its principal place of business. The county clerk shall accept and record the documents if they are accompanied by the proper fee and, after indexing, forward to the department proper documentation that the certificate of approval with the articles of association attached have been properly filed and recorded. When the documents are so recorded, the credit union shall be organized in accordance with the Credit Union Act and may begin transacting business.

(9) If the director's decision on the application is unfavorable, he or she shall notify the subscribers of the reasons for the decision. The subscribers may then request a public hearing if no such hearing was held at the time the application was submitted for consideration.

(10) The request for a public hearing shall be made in writing to the director not more than thirty calendar days after his or her decision. The director, within ten calendar days after receipt of a request for a hearing, shall set a date for the hearing at a time and place convenient to the director and the subscribers, but no longer than sixty calendar days after receipt of such request. The director may request a stenographic record of the hearing.

Source: Laws 1996, LB 948, § 24; Laws 2017, LB375, § 4.

21-1725 Repealed. Laws 2017, LB375, § 10.

21-1725.01 New credit union; branch credit union; application; procedure; hearing.

(1) Upon receiving an application to establish a new credit union, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the credit union. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant

agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate.

(2) When application is made to establish a branch of a credit union, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant credit union warrants a hearing. If the director determines that the condition of the credit union does not warrant a hearing, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch would be located. If the director receives any substantive objection to the proposed credit union branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date.

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

(4) The expense of any publication required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 2002, LB 957, § 17; Laws 2003, LB 217, § 30; Laws 2005, LB 533, § 30; Laws 2010, LB890, § 13; Laws 2016, LB751, § 7.

21-1736 Examinations.

(1) The director shall examine or cause to be examined each credit union as often as deemed necessary. Each credit union and all of its officials and agents shall give the director or any of the examiners appointed by him or her free and full access to all books, papers, securities, and other sources of information relative to such credit union. For purposes of the examination, the director may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) The department shall forward a report of the examination to the chairperson of the board of directors within ninety calendar days after completion. The report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within ninety calendar days after the receipt of such report, the members of the board of directors and the members of the supervisory committee and credit committee, if any, shall meet to consider the matters contained in the report.

(3) The director may require special examinations of and special financial reports from a credit union or a credit union service organization in which a credit union loans, invests, or delegates substantially all managerial duties and responsibilities when he or she determines that such examinations and reports are necessary to enable the director to determine the safety of a credit union's operations or its solvency. The cost to the department of such special examinations shall be borne by the credit union being examined.

(4) The director may accept, in lieu of any examination of a credit union authorized by the laws of this state, a report of an examination made of a credit union by the National Credit Union Administration or may examine any such credit union jointly with such federal agency. The director may make available to the National Credit Union Administration copies of reports of any examination or any information furnished to or obtained by the director in any examination.

Source: Laws 1996, LB 948, § 36; Laws 2002, LB 957, § 18; Laws 2017, LB375, § 5.

21-1740 Credit union; powers.

(1) A credit union shall have all the powers specified in this section and all the powers specified by any other provision of the Credit Union Act.

(2) A credit union may make contracts.

(3) A credit union may sue and be sued.

(4) A credit union may adopt a seal and alter the same.

(5) A credit union may individually or jointly with other credit unions purchase, lease, or otherwise acquire and hold tangible personal property necessary or incidental to its operations. A credit union shall depreciate or appreciate such personal property in the manner and at the rates the director may prescribe by rule or order from time to time.

(6) A credit union may, in whole or part, sell, lease, assign, pledge, hypothecate, or otherwise dispose of its tangible personal property, including such property obtained as a result of defaults under obligations owing to it.

(7) A credit union may incur and pay necessary and incidental operating expenses.

(8) A credit union may receive, from a member, from another credit union, from an officer, or from an employee, payments representing equity on (a) share accounts which may be issued at varying dividend rates, (b) share account certificates which may be issued at varying dividend rates and maturities, and (c) share draft accounts, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the department. A credit union shall provide for the transfer and withdrawal of funds from accounts by the means and through the payment system that the board of directors determines best serves the convenience and needs of members.

(9) A credit union may lend its funds to its members as provided in the Credit Union Act.

(10) A credit union may borrow from any source in an amount not exceeding fifty percent of its capital and deposits.

(11) A credit union may provide debt counseling and other financial counseling services to its members.

(12) A credit union may, in whole or in part, discount, sell, assign, pledge, hypothecate, or otherwise dispose of its intangible personal property. The approval of the director shall be required before a credit union may discount, sell, assign, pledge, hypothecate, or otherwise dispose of twenty percent or more of its intangible personal property within one month unless the credit union is in liquidation.

(13) A credit union may purchase any of the assets of another financial institution or assume any of the liabilities of another financial institution with the approval of the director. A credit union may also purchase any of the assets of a financial institution which is in liquidation or receivership.

(14) A credit union may make deposits in or loans to banks, savings banks, savings and loan associations, and trust companies, purchase shares in mutual savings and loan associations, and make deposits in or loans to or purchase shares of other credit unions, including corporate central credit unions, if such institutions are either insured by an agency of the federal government or are eligible under the laws of the United States to apply for such insurance and invest funds as otherwise provided in sections 21-17,100 to 21-17,102.

(15) A credit union may make deposits in, make loans to, or purchase shares of any federal reserve bank or central liquidity facility established under state or federal law.

(16) A credit union may hold membership in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law.

(17) A credit union may engage in activities and programs of the federal government, any state, or any agency or political subdivision thereof when approved by the board of directors and not inconsistent with the Credit Union Act.

(18) A credit union may receive funds either as shares or deposits from other credit unions.

(19) A credit union may lease tangible personal property to its members if the credit union acquires no interest in the property prior to its selection by the member.

(20) A credit union may, in whole or in part, purchase, sell, pledge, discount, or otherwise acquire and dispose of obligations of its members in accordance with the rules and regulations promulgated by the director. This subsection shall not apply to participation loans originated pursuant to section 21-1794.

(21) A credit union may, at its own expense, purchase insurance for its members in connection with its members' shares, loans, and other accounts.

(22) A credit union may establish, operate, participate in, and hold membership in systems that allow the transfer of credit union funds and funds of its members by electronic or other means, including, but not limited to, clearing-house associations, data processing and other electronic networks, the federal reserve system, or any other government payment or liquidity program.

(23) A credit union may issue credit cards and debit cards to allow members to obtain access to their shares and extensions of credit if such issuance is not inconsistent with the rules of the department. The department may by rule or regulation allow the use of devices similar to credit cards and debit cards to allow members to access their shares and extensions of credit.

(24) A credit union may service the loans it sells, in whole or in part, to a third party.

(25) In addition to loan and investment powers otherwise authorized by the Credit Union Act, a credit union may organize, invest in, and make loans to corporations or other organizations (a) which engage in activities incidental to the conduct of a credit union or in activities which further or facilitate the purposes of a credit union or (b) which furnish services to credit unions. The

director shall determine by rule, regulation, or order the activities and services which fall within the meaning of this subsection. A credit union shall notify the director of any such investment or loan if it would cause the aggregate of such investments and loans to exceed two percent of the credit union's capital and deposits. Such investments and loans may not, in the aggregate, exceed five percent of the capital and deposits of the credit union.

(26) A credit union may purchase, lease, construct, or otherwise acquire and hold land and buildings for the purpose of providing adequate facilities for the transaction of present and potential future business. A credit union may use such land and buildings for the principal office functions, service facilities, and any other activity in which it engages. A credit union may rent excess space as a source of income. A credit union shall depreciate or appreciate such buildings owned by it in the manner and at the rates the director may prescribe by rule, regulation, or order from time to time. A credit union's investment and contractual obligations, direct, indirect, or contingent, in land and buildings under this subsection shall not exceed seven percent of its capital and deposits without prior approval of the director. This subsection shall not affect the legality of investments in land and buildings made prior to October 1, 1996.

(27) A credit union may, in whole or in part, sell, lease, assign, mortgage, pledge, hypothecate, or otherwise dispose of its land and buildings, including land and buildings obtained as a result of defaults under obligations owing to it.

Source: Laws 1996, LB 948, § 40; Laws 1997, LB 137, § 13; Laws 2017, LB375, § 6.

21-1741 Safe deposit box service.

A credit union, by action of its board of directors, may, to the same extent as a bank organized under the laws of this state, operate a safe deposit box service for its members pursuant to sections 8-501 and 8-502.

Source: Laws 1996, LB 948, § 41; Laws 1997, LB 137, § 14; Laws 2017, LB375, § 7.

21-1770 Loan officer license; opt out.

The chief executive officer or the credit committee may apply to the department on forms supplied by the department for the licensing of one or more loan officers in order to delegate to such loan officers the power to approve loans and disburse loan funds up to the limits and according to policies established by the credit committee, if any, and in the absence of a credit committee, the board of directors. Such application shall include information deemed necessary by the department and shall be signed by the entire credit committee, if any, and in the absence of a credit committee, the entire board of directors, as well as the new loan officer seeking a license. No person shall act in the capacity of loan officer for more than thirty days until approved by the department unless the credit union has elected to opt out of licensing loan officers on forms supplied by the department.

Source: Laws 1996, LB 948, § 70; Laws 1999, LB 107, § 4; Laws 2017, LB140, § 148.

21-1782 Joint accounts.

(1) A credit union member may designate any person or persons to own a share account with the member in joint tenancy with right of survivorship, as a tenant in common, or under any other form of joint ownership permitted by law and allowed by the credit union.

(2) Payment may be made, in whole or in part, to any of the joint owners if an agreement permitting such payment was signed and dated by all persons when the shares were issued or thereafter. Payment made pursuant to this section discharges the credit union from all claims for amounts paid, whether or not the payment is consistent with the beneficial ownership of the account.

(3) If more than one joint owner seeks credit union membership through a joint account, each prospective member must meet any membership requirements described in the credit union's bylaws.

Source: Laws 1996, LB 948, § 82; Laws 2017, LB375, § 8.

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, 2018, 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; Laws 2012, LB963, § 22; Laws 2013, LB213, § 13; Laws 2014, LB712, § 3; Laws 2015, LB286, § 3; Laws 2016, LB676, § 3; Laws 2017, LB140, § 149; Laws 2018, LB812, § 9.

Effective date April 12, 2018.

21-17,116 Repealed. Laws 2017, LB375, § 10.**ARTICLE 19****NEBRASKA NONPROFIT CORPORATION ACT**

(a) GENERAL PROVISIONS

Section

21-1905. Fees.

(d) NAMES

21-1931. Corporate name.

21-1933. Registered name.

(m) DISSOLUTION

21-19,139. Reinstatement following administrative dissolution.

(n) FOREIGN CORPORATIONS

21-19,151. Foreign corporation; corporate name.

21-19,159. Foreign corporation; revoked certificate; application for reinstatement.

21-19,163. Foreign corporation; domestication; procedure; effect.

(o) RECORDS AND REPORTS

21-19,172. Biennial report; contents.

(a) GENERAL PROVISIONS

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

(1)(i) Articles of incorporation or (ii) documents relating to domestication . . . \$10.00

(2) Application for reserved name . . . \$25.00

(3) Notice of transfer of reserved name . . . \$25.00

(4) Application for registered name . . . \$25.00

(5) Application for renewal of registered name . . . \$25.00

(6) Corporation's statement of change of registered agent or registered office or both . . . \$5.00

(7) Agent's statement of change of registered office for each affected corporation . . . \$25.00 (not to exceed a total of \$1,000)

(8) Agent's statement of resignation . . . no fee

(9) Amendment of articles of incorporation . . . \$5.00

(10) Restatement of articles of incorporation with amendments . . . \$5.00

(11) Articles of merger . . . \$5.00

(12) Articles of dissolution . . . \$5.00

(13) Articles of revocation of dissolution . . . \$5.00

(14) Certificate of administrative dissolution . . . no fee

(15) Application for reinstatement following administrative dissolution . . . \$5.00

(16) Application for reinstatement more than five years after the effective date of an administrative dissolution or administrative revocation . . . \$500.00

(17) Certificate of reinstatement . . . no fee

- (18) Certificate of judicial dissolution . . . no fee
- (19) Certificate of authority . . . \$10.00
- (20) Application for amended certificate of authority . . . \$5.00
- (21) Application for certificate of withdrawal . . . \$5.00
- (22) Certificate of revocation of authority to transact business . . . no fee
- (23) Biennial report . . . \$20.00
- (24) Articles of correction . . . \$5.00
- (25) Application for certificate of good standing . . . \$10.00
- (26) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act . . . \$5.00
 - (i) Amendments . . . \$5.00
 - (ii) Mergers . . . \$5.00

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section, except that there shall be no recording fee collected for the filing of a biennial report required by section 21-19,172.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) \$1.00 per page; and
- (2) \$10.00 for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1996, LB 681, § 5; Laws 2008, LB907, § 1; Laws 2015, LB279, § 9; Laws 2018, LB749, § 1.
Effective date July 19, 2018.

(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 21-231, 21-232, 21-1932, or 21-1933;
- (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; Laws 2014, LB749, § 263.

21-1933 Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 21-19,151, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved under section 21-231 or 21-1932 or registered under this section; and

(3) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section 21-19,151, by delivering to the Secretary of State an application:

(1) Setting forth its corporate name, or its corporate name with any change required by section 21-19,151, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(c) The corporate name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation or other business entity thereafter incorporated under the Nebraska Nonprofit Corporation Act or authorized to transact business in this state or by another foreign corporation or business entity thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation or business entity qualifies or consents to the qualification of another foreign corporation or business entity under the registered name.

Source: Laws 1996, LB 681, § 33; Laws 1997, LB 44, § 3; Laws 2003, LB 464, § 2; Laws 2014, LB749, § 264.

(m) DISSOLUTION

21-19,139 Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-1931.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) A corporation that has been administratively dissolved under section 21-19,138 for more than five years may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of section 21-1931;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Source: Laws 1996, LB 681, § 139; Laws 2012, LB854, § 4; Laws 2015, LB279, § 10.

(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 21-231, 21-232, 21-1932, or 21-1933;

(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; Laws 2014, LB749, § 265.

21-19,159 Foreign corporation; revoked certificate; application for reinstatement.

(a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151.

(b) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(c) A foreign corporation, the certificate of authority of which has been revoked under section 21-19,158 for more than five years, may apply to the Secretary of State for late reinstatement. The application, along with the fee set forth in section 21-1905, must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151;

(4) State that a legitimate reason exists for reinstatement and what such legitimate reason is; and

(5) State that such reinstatement does not constitute fraud on the public.

(d) If the Secretary of State determines that the application for late reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of late reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its activities as if the revocation had never occurred.

Source: Laws 1996, LB 681, § 159; Laws 2012, LB854, § 5; Laws 2015, LB279, § 11.

21-19,163 Foreign corporation; domestication; procedure; effect.

If a foreign corporation, which has domesticated pursuant to section 21-19,161, surrenders its foreign corporate charter and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-1920, 21-1921, and 21-19,173, such foreign corporation shall thereupon become and be a domestic corporation organized under the Nebraska Nonprofit Corporation Act. The original incorporation date of a foreign corporation which has domesticated in Nebraska shall not be affected by such domestication. The domesticated corporation shall be the same corporation as the one that existed under the laws of the state in which the corporation was previously domiciled. Upon domesticating in Nebraska, the corporation shall continue to exist without interruption and shall maintain its same liabilities and obligations.

Source: Laws 1996, LB 681, § 163; Laws 2017, LB476, § 1.

(o) RECORDS AND REPORTS

21-19,172 Biennial report; contents.

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address of its registered office and the name of its current registered agent at the office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

(g) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 1996, LB 681, § 172; Laws 2008, LB379, § 14; Laws 2014, LB774, § 3.

ARTICLE 20

BUSINESS CORPORATION ACT

(a) GENERAL PROVISIONS

Section	
21-2001.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2002.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2003.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2004.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2005.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.
21-2006.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2007.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2008.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2009.	Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

BUSINESS CORPORATION ACT

Section

- 21-2010. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2011. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2012. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2013. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2014. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2015. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2016. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(b) INCORPORATION

- 21-2017. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2018. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2019. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2020. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2021. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2022. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2023. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(c) PURPOSES AND POWERS

- 21-2024. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2025. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2026. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2027. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(d) NAME

- 21-2028. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2029. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2030. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(e) OFFICE AND AGENT

- 21-2031. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2032. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2033. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2034. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(f) SHARES AND DISTRIBUTIONS

- 21-2035. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2036. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2037. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2038. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2039. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2040. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2041. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2042. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2043. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2044. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2045. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2046. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2047. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2048. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2049. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2050. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(g) SHAREHOLDERS

- 21-2051. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2052. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2053. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2054. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2055. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2056. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2057. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2058. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2059. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

Section

(n) FOREIGN CORPORATIONS

- 21-20,168. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,169. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,170. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,171. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,172. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,173. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,174. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,175. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,176. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,177. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB294, § 25.
 21-20,178. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,179. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,180. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,180.01. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.
 21-20,181. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,181.01. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,181.02. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,181.03. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(o) RECORDS AND REPORTS

- 21-20,182. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,183. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,184. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,185. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,186. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,187. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,188. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(p) PUBLICATION

- 21-20,189. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(q) TRANSITION PROVISIONS

- 21-20,190. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,191. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,192. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,193. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(r) CONVERSION

- 21-20,194. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,195. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,196. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
 21-20,197. Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(a) GENERAL PROVISIONS

21-2001 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2002 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2003 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2004 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2005 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

21-2006 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2007 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2008 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2009 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2010 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2011 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2012 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2013 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2014 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2015 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2016 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(b) INCORPORATION

21-2017 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2018 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2019 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2020 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2021 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2022 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2023 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(c) PURPOSES AND POWERS

21-2024 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2025 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2026 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2027 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(d) NAME

21-2028 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2029 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2030 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(e) OFFICE AND AGENT

21-2031 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-2032 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2033 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2034 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(f) SHARES AND DISTRIBUTIONS

21-2035 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2036 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2037 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2038 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2039 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2040 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2041 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2042 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2043 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2044 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2045 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2046 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2047 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2048 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2049 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2050 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(g) SHAREHOLDERS

21-2051 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2052 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2053 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2054 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2055 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2056 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2057 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2058 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2059 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-2060 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

- 21-2061 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2062 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2063 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2064 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2065 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2066 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2067 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2068 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2069 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2070 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2071 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2072 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2073 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2074 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2075 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2076 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2077 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(h) DIRECTORS AND OFFICERS

- 21-2078 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2079 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2080 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2081 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2082 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2083 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2084 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2085 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2086 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2087 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2088 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2089 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2090 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

- 21-2091 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2092 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2093 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2094 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2095 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2096 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2097 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2098 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-2099 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,100 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,101 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,102 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,103 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,104 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,105 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,106 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,107 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,108 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,109 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,110 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,111 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,112 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,113 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,114 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,115 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- (i) AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS
- 21-20,116 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,117 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,118 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,119 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
- 21-20,120 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

- 21-20,121 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,122 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,123 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,124 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,125 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,126 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,127 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(j) MERGER AND SHARE EXCHANGE

- 21-20,128 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,129 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,130 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,131 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,132 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,133 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,134 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(k) SALE OF ASSETS

- 21-20,135 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,135.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,136 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(l) DISSENTERS' RIGHTS

- 21-20,137 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,138 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,139 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,140 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,141 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,142 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,143 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,144 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,145 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.
21-20,146 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,147 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,148 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,149 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,150 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(m) DISSOLUTION

21-20,151 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,152 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,153 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,154 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,155 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,156 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,157 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,158 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,159 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,160 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10;
Laws 2015, LB279, § 19.

21-20,161 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,162 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,163 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,164 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,165 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,166 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,167 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(n) FOREIGN CORPORATIONS

21-20,168 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,169 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,170 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,171 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,172 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,173 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,174 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,175 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,176 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,177 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB294, § 25.

21-20,178 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,179 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,180 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,180.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10; Laws 2015, LB279, § 19.

21-20,181 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,181.01 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,181.02 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,181.03 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(o) RECORDS AND REPORTS

21-20,182 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,183 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,184 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,185 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,186 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,187 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,188 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(p) PUBLICATION

21-20,189 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(q) TRANSITION PROVISIONS

21-20,190 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,191 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,192 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,193 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

(r) CONVERSION

21-20,194 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,195 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,196 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

21-20,197 Repealed. Laws 2014, LB749, § 298; Laws 2015, LB157, § 10.

ARTICLE 21

NEBRASKA BUSINESS DEVELOPMENT CORPORATION ACT

Section

- 21-2103. Business development corporations; incorporation.
 21-2105. Powers.
 21-2110. Shares; par value; authorized capital.
 21-2115. Books and records.

21-2103 Business development corporations; incorporation.

One or more business development corporations may be incorporated in this state pursuant to the Nebraska Model Business Corporation Act not in conflict with or inconsistent with the provisions of the Nebraska Business Development Corporation Act.

Source: Laws 1967, c. 100, § 3, p. 303; Laws 1995, LB 109, § 204; Laws 2014, LB749, § 266.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2105 Powers.

(1) A development corporation shall have all the powers granted to corporations organized under the Nebraska Model Business Corporation Act, except that it shall not give security for any loan made to it by members unless all loans to it by members are secured ratably in proportion to unpaid balances due.

(2) The restriction in subsection (1) of this section shall in no manner be construed so as to prohibit a development corporation from making unsecured borrowings from the federal Small Business Administration.

Source: Laws 1967, c. 100, § 5, p. 304; Laws 1995, LB 109, § 205; Laws 2014, LB749, § 267.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2110 Shares; par value; authorized capital.

(1) Each share of stock of the corporation shall have a par value of not less than ten dollars per share, as fixed by its articles of incorporation, and shall be issued only for lawful money of the United States. At least two hundred thousand dollars shall be paid into the treasury for capital stock before a corporation shall be authorized to transact any business other than such business as relates to its organization.

(2) Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, as such member.

(3) The rights given by the Nebraska Model Business Corporation Act to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation

created under the Nebraska Business Development Corporation Act. The voting rights of the members shall be the same as if they were a separate class of shareholders, and shareholders and members shall in all cases vote separately by classes. A quorum at a shareholders' meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Source: Laws 1967, c. 100, § 10, p. 306; Laws 1995, LB 109, § 206; Laws 2014, LB749, § 268.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2115 Books and records.

A corporation shall keep, in addition to the books and records required by the Nebraska Model Business Corporation Act, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to all books and records as are given to shareholders in the Nebraska Model Business Corporation Act.

Source: Laws 1967, c. 100, § 15, p. 308; Laws 1995, LB 109, § 207; Laws 2014, LB749, § 269.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

ARTICLE 22

PROFESSIONAL CORPORATIONS

Section

- 21-2203. Powers, benefits, and privileges.
- 21-2204. Articles of incorporation; certificate of registration; filing.
- 21-2209. Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.
- 21-2212. Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.

21-2203 Powers, benefits, and privileges.

Except as the Nebraska Professional Corporation Act shall otherwise require, professional corporations shall enjoy all the powers, benefits, and privileges and be subject to all the duties, restrictions, and liabilities of a business corporation under the Nebraska Model Business Corporation Act and sections 21-301 to 21-325.02.

Source: Laws 1969, c. 121, § 3, p. 556; Laws 1995, LB 109, § 208; Laws 2014, LB749, § 270.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2204 Articles of incorporation; certificate of registration; filing.

(1) One or more individuals residing within the State of Nebraska, each of whom is licensed or otherwise legally authorized to render the same profession-

al service, may, by filing articles of incorporation and a certificate of registration with the Secretary of State, organize and become a shareholder in a professional corporation. The articles of incorporation shall conform to the requirements of section 21-220 and the certificate of registration shall conform to the requirements of sections 21-2216 to 21-2218.

(2) In addition to the requirements of subsection (1) of this section, the articles of incorporation shall contain a statement of the profession to be practiced by the corporation.

Source: Laws 1969, c. 121, § 4, p. 556; Laws 1995, LB 109, § 209; Laws 2004, LB 16, § 1; Laws 2014, LB749, § 271.

21-2209 Provision of services in another jurisdiction; license required, when; foreign corporation; requirements.

(1) A professional corporation may provide professional services in another jurisdiction if such corporation complies with all applicable laws of such jurisdiction regulating the rendering of professional services. Notwithstanding any other provision of the Nebraska Professional Corporation Act, no shareholder, director, officer, employee, or agent of a professional corporation shall be required to be licensed to render professional services in this state or to reside in this state if such shareholder, director, officer, employee, or agent does not render professional services in this state and is licensed in one or more states, territories of the United States, or the District of Columbia to render a professional service described in the professional corporation's articles of incorporation.

(2) A foreign professional corporation shall not transact business in this state unless it renders one of the professional services specified in subdivision (3) of section 21-2202 and complies with the provisions of the act, including, without limitation, registration with the appropriate regulating board in this state as provided in sections 21-2216 to 21-2218. A foreign professional corporation shall not transact business in this state if the laws of the jurisdiction under which such foreign professional corporation is incorporated do not allow for a professional corporation incorporated under the laws of this state to transact business in such jurisdiction.

(3)(a) A foreign professional corporation shall (i) apply for a certificate of authority in the same manner as a foreign business corporation pursuant to sections 21-2,203 to 21-2,220 and (ii) file with the Secretary of State a current certificate of registration as provided in sections 21-2216 to 21-2218.

(b) Except as otherwise provided in the Nebraska Professional Corporation Act, foreign professional corporations shall enjoy all the powers, benefits, and privileges and shall be subject to all the duties, restrictions, and liabilities of a foreign business corporation under sections 21-301 to 21-325.02 and the Nebraska Model Business Corporation Act.

(c) A foreign professional corporation shall not be required as a condition to obtaining a certificate of authority to have all of its shareholders, directors, and officers licensed to render professional services in this state if all of its shareholders, directors, and officers, except the secretary and assistant secretary, are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in its articles of incorporation and any shareholder, director, officer, employee, or agent who

renders professional services within this state on behalf of the foreign professional corporation is licensed to render professional services in this state.

(d) A foreign professional corporation is not required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for the conduct of business or professional practice.

(4) For purposes of this section, foreign professional corporation means a corporation which is organized under the law of any other state or territory of the United States or the District of Columbia for the specific purpose of rendering professional services and which has as its shareholders only individuals who are duly licensed or otherwise legally authorized to render the same professional services as the corporation.

Source: Laws 1994, LB 488, § 2; Laws 1995, LB 109, § 210; Laws 1995, LB 406, § 3; Laws 2004, LB 16, § 2; Laws 2014, LB749, § 272.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

21-2212 Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.

(1) The articles of incorporation or the bylaws of the professional corporation shall provide for the purchase or redemption of the shares of any shareholder upon his or her death or disqualification to render the professional services of the professional corporation within this state.

(2) Unless otherwise provided in the articles of incorporation or the bylaws of the professional corporation, upon the death or disqualification of the last remaining shareholder of a professional corporation, a successor in interest to such deceased or disqualified shareholder may dissolve the corporation and wind up and liquidate its business and affairs, notwithstanding the fact that such successor in interest could not have become a shareholder of the professional corporation. The successor in interest may file articles of dissolution with the Secretary of State in accordance with section 21-2,186. Thereafter, the successor in interest may wind up and liquidate the corporation's business and affairs in accordance with section 21-2,188 and notify claimants in accordance with sections 21-2,189 and 21-2,190.

Source: Laws 1969, c. 121, § 12, p. 558; Laws 2010, LB759, § 1; Laws 2014, LB749, § 273.

ARTICLE 24

SHAREHOLDERS PROTECTION ACT

Section
21-2439. Control-share acquisition, defined.

21-2439 Control-share acquisition, defined.

Control-share acquisition shall mean an acquisition, directly or indirectly, by an acquiring person of ownership of voting stock of an issuing public corporation that, except for the Shareholders Protection Act, would, when added to all other shares of the issuing public corporation owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or

direct the exercise of a new range of voting power within any of the following ranges of voting power: (1) At least twenty percent but less than thirty-three and one-third percent; (2) at least thirty-three and one-third percent but less than or equal to fifty percent; or (3) over fifty percent.

The acquisition of any shares of an issuing public corporation shall not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances: (a) Before April 9, 1988; (b) pursuant to a contract existing before April 9, 1988; (c) pursuant to the laws of descent and distribution; (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the Shareholders Protection Act; (e) pursuant to a merger or plan of share exchange effected in compliance with sections 21-2,161 to 21-2,168 if the issuing public corporation is a party to the plan of merger or plan of share exchange; or (f) from a person who owns over fifty percent of the shares of an issuing public corporation and who acquired the shares prior to April 9, 1988.

All shares, the ownership of which is acquired within a one-hundred-twenty-day period, and all shares, the ownership of which is acquired pursuant to a plan to make a control-share acquisition, shall be deemed to have been acquired in the same acquisition.

Source: Laws 1988, LB 1110, § 9; Laws 1995, LB 109, § 211; Laws 2014, LB749, § 274.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section

21-2601.	Repealed. Laws 2013, LB 283, § 10.
21-2601.01.	Repealed. Laws 2013, LB 283, § 10.
21-2602.	Repealed. Laws 2013, LB 283, § 10.
21-2603.	Repealed. Laws 2013, LB 283, § 10.
21-2604.	Repealed. Laws 2013, LB 283, § 10.
21-2604.01.	Repealed. Laws 2013, LB 283, § 10.
21-2605.	Repealed. Laws 2013, LB 283, § 10.
21-2606.	Repealed. Laws 2013, LB 283, § 10.
21-2607.	Repealed. Laws 2013, LB 283, § 10.
21-2608.	Repealed. Laws 2013, LB 283, § 10.
21-2609.	Repealed. Laws 2013, LB 283, § 10.
21-2610.	Repealed. Laws 2013, LB 283, § 10.
21-2611.	Repealed. Laws 2013, LB 283, § 10.
21-2612.	Repealed. Laws 2013, LB 283, § 10.
21-2613.	Repealed. Laws 2013, LB 283, § 10.
21-2614.	Repealed. Laws 2013, LB 283, § 10.
21-2615.	Repealed. Laws 2013, LB 283, § 10.
21-2616.	Repealed. Laws 2013, LB 283, § 10.
21-2617.	Repealed. Laws 2013, LB 283, § 10.
21-2617.01.	Repealed. Laws 2013, LB 283, § 10.
21-2618.	Repealed. Laws 2013, LB 283, § 10.
21-2619.	Repealed. Laws 2013, LB 283, § 10.
21-2620.	Repealed. Laws 2013, LB 283, § 10.
21-2621.	Repealed. Laws 2013, LB 283, § 10.
21-2622.	Repealed. Laws 2013, LB 283, § 10.
21-2623.	Repealed. Laws 2013, LB 283, § 10.
21-2624.	Repealed. Laws 2013, LB 283, § 10.
21-2625.	Repealed. Laws 2013, LB 283, § 10.
21-2626.	Repealed. Laws 2013, LB 283, § 10.
21-2627.	Repealed. Laws 2013, LB 283, § 10.

Section

- 21-2628. Repealed. Laws 2013, LB 283, § 10.
- 21-2629. Repealed. Laws 2013, LB 283, § 10.
- 21-2630. Repealed. Laws 2013, LB 283, § 10.
- 21-2631. Repealed. Laws 2013, LB 283, § 10.
- 21-2631.01. Repealed. Laws 2013, LB 283, § 10.
- 21-2631.02. Repealed. Laws 2013, LB 283, § 10.
- 21-2631.03. Repealed. Laws 2013, LB 283, § 10.
- 21-2632. Repealed. Laws 2013, LB 283, § 10.
- 21-2632.01. Repealed. Laws 2013, LB 283, § 10.
- 21-2633. Repealed. Laws 2013, LB 283, § 10.
- 21-2634. Repealed. Laws 2013, LB 283, § 10.
- 21-2635. Repealed. Laws 2013, LB 283, § 10.
- 21-2636. Repealed. Laws 2013, LB 283, § 10.
- 21-2637. Repealed. Laws 2013, LB 283, § 10.
- 21-2638. Repealed. Laws 2013, LB 283, § 10.
- 21-2639. Repealed. Laws 2013, LB 283, § 10.
- 21-2640. Repealed. Laws 2013, LB 283, § 10.
- 21-2641. Repealed. Laws 2013, LB 283, § 10.
- 21-2642. Repealed. Laws 2013, LB 283, § 10.
- 21-2643. Repealed. Laws 2013, LB 283, § 10.
- 21-2644. Repealed. Laws 2013, LB 283, § 10.
- 21-2645. Repealed. Laws 2013, LB 283, § 10.
- 21-2646. Repealed. Laws 2013, LB 283, § 10.
- 21-2647. Repealed. Laws 2013, LB 283, § 10.
- 21-2648. Repealed. Laws 2013, LB 283, § 10.
- 21-2649. Repealed. Laws 2013, LB 283, § 10.
- 21-2650. Repealed. Laws 2013, LB 283, § 10.
- 21-2651. Repealed. Laws 2013, LB 283, § 10.
- 21-2652. Repealed. Laws 2013, LB 283, § 10.
- 21-2653. Repealed. Laws 2013, LB 283, § 10.
- 21-2654. Repealed. Laws 2013, LB 283, § 10.

21-2601 Repealed. Laws 2013, LB 283, § 10.

21-2601.01 Repealed. Laws 2013, LB 283, § 10.

21-2602 Repealed. Laws 2013, LB 283, § 10.

21-2603 Repealed. Laws 2013, LB 283, § 10.

21-2604 Repealed. Laws 2013, LB 283, § 10.

21-2604.01 Repealed. Laws 2013, LB 283, § 10.

21-2605 Repealed. Laws 2013, LB 283, § 10.

21-2606 Repealed. Laws 2013, LB 283, § 10.

21-2607 Repealed. Laws 2013, LB 283, § 10.

21-2608 Repealed. Laws 2013, LB 283, § 10.

21-2609 Repealed. Laws 2013, LB 283, § 10.

21-2610 Repealed. Laws 2013, LB 283, § 10.

21-2611 Repealed. Laws 2013, LB 283, § 10.

21-2612 Repealed. Laws 2013, LB 283, § 10.

21-2613 Repealed. Laws 2013, LB 283, § 10.

- 21-2614 Repealed. Laws 2013, LB 283, § 10.
- 21-2615 Repealed. Laws 2013, LB 283, § 10.
- 21-2616 Repealed. Laws 2013, LB 283, § 10.
- 21-2617 Repealed. Laws 2013, LB 283, § 10.
- 21-2617.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2618 Repealed. Laws 2013, LB 283, § 10.
- 21-2619 Repealed. Laws 2013, LB 283, § 10.
- 21-2620 Repealed. Laws 2013, LB 283, § 10.
- 21-2621 Repealed. Laws 2013, LB 283, § 10.
- 21-2622 Repealed. Laws 2013, LB 283, § 10.
- 21-2623 Repealed. Laws 2013, LB 283, § 10.
- 21-2624 Repealed. Laws 2013, LB 283, § 10.
- 21-2625 Repealed. Laws 2013, LB 283, § 10.
- 21-2626 Repealed. Laws 2013, LB 283, § 10.
- 21-2627 Repealed. Laws 2013, LB 283, § 10.
- 21-2628 Repealed. Laws 2013, LB 283, § 10.
- 21-2629 Repealed. Laws 2013, LB 283, § 10.
- 21-2630 Repealed. Laws 2013, LB 283, § 10.
- 21-2631 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.02 Repealed. Laws 2013, LB 283, § 10.
- 21-2631.03 Repealed. Laws 2013, LB 283, § 10.
- 21-2632 Repealed. Laws 2013, LB 283, § 10.
- 21-2632.01 Repealed. Laws 2013, LB 283, § 10.
- 21-2633 Repealed. Laws 2013, LB 283, § 10.
- 21-2634 Repealed. Laws 2013, LB 283, § 10.
- 21-2635 Repealed. Laws 2013, LB 283, § 10.
- 21-2636 Repealed. Laws 2013, LB 283, § 10.
- 21-2637 Repealed. Laws 2013, LB 283, § 10.
- 21-2638 Repealed. Laws 2013, LB 283, § 10.
- 21-2639 Repealed. Laws 2013, LB 283, § 10.

- 21-2640 Repealed. Laws 2013, LB 283, § 10.
- 21-2641 Repealed. Laws 2013, LB 283, § 10.
- 21-2642 Repealed. Laws 2013, LB 283, § 10.
- 21-2643 Repealed. Laws 2013, LB 283, § 10.
- 21-2644 Repealed. Laws 2013, LB 283, § 10.
- 21-2645 Repealed. Laws 2013, LB 283, § 10.
- 21-2646 Repealed. Laws 2013, LB 283, § 10.
- 21-2647 Repealed. Laws 2013, LB 283, § 10.
- 21-2648 Repealed. Laws 2013, LB 283, § 10.
- 21-2649 Repealed. Laws 2013, LB 283, § 10.
- 21-2650 Repealed. Laws 2013, LB 283, § 10.
- 21-2651 Repealed. Laws 2013, LB 283, § 10.
- 21-2652 Repealed. Laws 2013, LB 283, § 10.
- 21-2653 Repealed. Laws 2013, LB 283, § 10.
- 21-2654 Repealed. Laws 2013, LB 283, § 10.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

PART 2—FILING AND REPORTS

Section

21-2923. Biennial report.

PART 7—DIRECTORS AND OFFICERS

21-2971. Conflict of interest.

PART 8—INDEMNIFICATION

21-2976. Indemnification.

PART 11—DISSOLUTION

21-2995. Reinstatement following administrative dissolution.

PART 2—FILING AND REPORTS

21-2923 Biennial report.

(1) A limited cooperative association or a foreign limited cooperative association authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of the limited cooperative association's or foreign limited cooperative association's designated office and the name and street and mailing addresses of its agent for service of process in this state;

(c) In the case of a limited cooperative association, the street and mailing addresses of its principal office if different from its designated office; and

(d) In the case of a foreign limited cooperative association, the state or other jurisdiction under whose law the foreign limited cooperative association is formed and any alternative name adopted under section 21-29,106.

(2) Information in the biennial report must be current as of the date the biennial report is delivered to the Secretary of State.

(3) Commencing on January 1, 2009, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited cooperative association files articles of organization or a foreign limited cooperative association becomes authorized to transact business in this state.

(4) If a biennial report does not contain the information required in subsection (1) of this section, the Secretary of State shall promptly notify the reporting limited cooperative association or foreign limited cooperative association and return the report for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed biennial report contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary of State immediately before the filing, the differing information in the biennial report is considered a statement of change under section 21-2914.

(6) If a limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-2994 to administratively dissolve the limited cooperative association.

(7) If a foreign limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-29,107 to revoke the certificate of authority of the foreign limited cooperative association.

(8) A correction or an amendment to the biennial report may be delivered to the Secretary of State for filing at any time.

Source: Laws 2007, LB368, § 23; Laws 2014, LB774, § 4.

PART 7—DIRECTORS AND OFFICERS

21-2971 Conflict of interest.

Except as otherwise provided in section 21-2970, the Nebraska Model Business Corporation Act governs conflicts of interests between a director or member of a committee of the board of directors and the limited cooperative association.

Source: Laws 2007, LB368, § 71; Laws 2014, LB749, § 275.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

PART 8—INDEMNIFICATION

21-2976 Indemnification.

Indemnification of any individual who has incurred liability, is a party, or is threatened to be made a party because of the performance of duties to, or activity on behalf of, the limited cooperative association is governed by the Nebraska Model Business Corporation Act.

Source: Laws 2007, LB368, § 76; Laws 2014, LB749, § 276.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

PART 11—DISSOLUTION

21-2995 Reinstatement following administrative dissolution.

(1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application for reinstatement contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(3) A limited cooperative association that has been administratively dissolved for more than five years may apply to the Secretary of State for late reinstatement. The application shall be delivered to the Secretary of State for filing, along with the fee set forth in section 21-2924, and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated;

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908;

(d) That a legitimate reason exists for reinstatement and what such legitimate reason is; and

(e) That such reinstatement does not constitute fraud on the public.

(4) If the Secretary of State determines that (a) the application for late reinstatement contains the information required by subsection (3) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes

and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

- (a) Prepare a declaration of late reinstatement that states this determination;
- (b) Sign and file the original of the declaration of reinstatement; and
- (c) Serve the limited cooperative association with a copy.

(5) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Source: Laws 2007, LB368, § 95; Laws 2012, LB854, § 8; Laws 2015, LB279, § 15.